

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

Page 209	Page 211
<p>1 UNITED STATES DISTRICT COURT</p> <p>2 SOUTHERN DISTRICT OF NEW YORK</p> <p>3 -----</p> <p>4 SECURITIES AND EXCHANGE)</p> <p>5 COMMISSION,)</p> <p>6 Plaintiff,)</p> <p>7) CASE NO.</p> <p>8 v.) 1:17-CV-00139-GHW</p> <p>9)</p> <p>10 GREGORY T. DEAN and)</p> <p>11 DONALD J. FOWLER,)</p> <p>12 Defendants.)</p> <p>13 -----</p> <p>14</p> <p>15 VIDEOTAPED DEPOSITION OF GREGORY T. DEAN</p> <p>16 FRIDAY, OCTOBER 27, 2017</p> <p>17 PAGES 209 - 300; VOLUME 2</p> <p>18</p> <p>19</p> <p>20 BEHMKER REPORTING AND VIDEO SERVICES, INC.</p> <p>21 BY: JOSEPH B. PIROZZI, RPR</p> <p>22 160 SPEAR STREET, SUITE 300</p> <p>23 SAN FRANCISCO, CALIFORNIA 94105</p> <p>24 (415) 597-5600</p> <p>25</p>	<p>1 APPEARANCES OF COUNSEL:</p> <p>2 FOR PLAINTIFF:</p> <p>3 U.S. SECURITIES AND EXCHANGE COMMISSION</p> <p>4 NEW YORK REGIONAL OFFICE</p> <p>5 BY: DAVID STOELTING, ATTORNEY AT LAW</p> <p>6 KRISTIN M. PAULEY, ATTORNEY AT LAW</p> <p>7 200 Vesey Street</p> <p>8 New York, New York 10281</p> <p>9 Telephone: (212) 336-0983</p> <p>10 Email: stoeltingd@sec.gov</p> <p>11 pauleyk@sec.gov</p> <p>12</p> <p>13 FOR DEFENDANTS GREGORY T. DEAN and</p> <p>14 DONALD J. FOWLER:</p> <p>15 MCCORMICK & O'BRIEN LLP</p> <p>16 BY: LIAM O'BRIEN, ATTORNEY AT LAW</p> <p>17 9 East 40th Street, Fourth Floor</p> <p>18 New York, New York 10016</p> <p>19 Telephone: (212) 286-4471</p> <p>20 Email: lobrien@mcoblaw.com</p> <p>21</p> <p>22 ALSO PRESENT:</p> <p>23 DAVID J. SCHERECK, VIDEOGRAPHER</p> <p>24 MICHAEL BENISON</p> <p>25</p>
Page 210	Page 212
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Videotaped deposition of GREGORY T. DEAN,</p> <p>9 VOLUME 2, taken on behalf of Plaintiff at the</p> <p>10 Securities and Exchange Commission, 200 Vesey</p> <p>11 Street, New York, New York, commencing at 1:00</p> <p>12 p.m., Friday, October 27, 2017, Before Joseph</p> <p>13 B. Pirozzi, Registered Professional Reporter,</p> <p>14 Pursuant to Notice of Deposition.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 INDEX</p> <p>2 FRIDAY, OCTOBER 27, 2017</p> <p>3 GREGORY T. DEAN - VOLUME 2 PAGE</p> <p>4 Examination by MS. PAULEY 215</p> <p>5 Examination by MR. O'BRIEN 298</p> <p>6</p> <p>7 -o0o-</p> <p>8</p> <p>9 QUESTIONS WITNESS DIRECTED NOT TO ANSWER:</p> <p>10 PAGE LINE</p> <p>11 None.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

Page 213	Page 215
<p>1 EXHIBITS</p> <p>2 GREGORY T. DEAN - VOLUME 2</p> <p>3 Number Description Page</p> <p>4 Exhibit 251 Plaintiff's First Request for</p> <p>5 Production of Documents From Defendant</p> <p>6 Gregory T. Dean - 5 pages 216</p> <p>7</p> <p>8 Exhibit 252 Transcript of Gregory T. Dean dated</p> <p>9 July 13, 2007 in the matter of</p> <p>10 Securities and Exchange Commission v.</p> <p>11 Gregory T. Dean, et al. - 78 pages 229</p> <p>12</p> <p>13 Exhibit 253 Transcript of Gregory Dean dated</p> <p>14 November 14, 2014 in the matter of</p> <p>15 J.D. Nicholas & Associates, Inc.</p> <p>16 - 53 pages 236</p> <p>17</p> <p>18 Exhibit 254 Audio transcription in the matter of</p> <p>19 JD Nicholas and Associates - 55 pages 244</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 THE VIDEOGRAPHER: Thank you.</p> <p>2 The court reporter today is Joe Pirozzi,</p> <p>3 Certified Shorthand Reporter, also with Behmke. And</p> <p>4 would you please swear in the witness.</p> <p>5</p> <p>6 GREGORY T. DEAN,</p> <p>7 called as a witness, having been duly sworn, testified</p> <p>8 as follows:</p> <p>9</p> <p>10 EXAMINATION RESUMED</p> <p>11 BY MS. PAULEY:</p> <p>12 Q. Good afternoon, Mr. Dean. As you know, I'm</p> <p>13 Kristin Pauley and this is David Stoelting and we</p> <p>14 represent the Securities and Exchange Commission in this</p> <p>15 case.</p> <p>16 The same ground rules apply as your deposition</p> <p>17 in July. So I'll be asking you questions, you know.</p> <p>18 Please let me know if you don't understand anything I've</p> <p>19 asked you. If you, you know, you need to answer my</p> <p>20 questions orally so the court reporter can accurately</p> <p>21 transcribe what is being said here today. If you would</p> <p>22 like to take a break at any time, please just let us</p> <p>23 know.</p> <p>24 I think that's about it, but any questions</p> <p>25 before we begin?</p>
Page 214	Page 216
<p>1 FRIDAY, OCTOBER 27, 2017; 1:00 P.M.</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Here begins DVD number 1 -- I'm</p> <p>4 sorry, number 7 in the volume 2 deposition of Gregory T.</p> <p>5 Dean in the matter of Securities and Exchange Commission</p> <p>6 versus Gregory T. Dean and Donald J. Fowler in the</p> <p>7 United States District Court, Southern District of New</p> <p>8 York. Case number is 17-CV-139 GHW.</p> <p>9 Today's date is October 27, 2017 and the time</p> <p>10 is approximately 1 p.m.</p> <p>11 My name is David Shereck with Behmke Reporting</p> <p>12 and Video Services, 160 Spear Street, San Francisco,</p> <p>13 California.</p> <p>14 This deposition is taking place at 200 Vesey</p> <p>15 Street, Suite 400, New York, New York, and was noticed</p> <p>16 by Kristin Pauley of the Securities and Exchange</p> <p>17 Commission.</p> <p>18 Will counsels please identify yourselves and</p> <p>19 whom you represent.</p> <p>20 MS. PAULEY: Kristin Pauley and David Stoelting on</p> <p>21 behalf of the Securities and Exchange Commission, and</p> <p>22 we're joined by one of the interns in our office,</p> <p>23 Michael Benison, B-E-N-I-S-O-N.</p> <p>24 MR. O'BRIEN: Liam O'Brien on behalf of the</p> <p>25 defendants.</p>	<p>1 A. Not at this point, no.</p> <p>2 Q. Okay. And you understand that you continue to</p> <p>3 be under oath during today's deposition, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Is there any reason why you can't</p> <p>6 testify truthfully?</p> <p>7 A. Not that I know of, no.</p> <p>8 MS. PAULEY: So I would like to mark this document</p> <p>9 as Exhibit 251, please.</p> <p>10 (Plaintiff's First Request for Production of</p> <p>11 Documents From Defendant Gregory T. Dean marked</p> <p>12 Exhibit 251 for identification)</p> <p>13 Q. So, Mr. Dean, please review Exhibit 251 and let</p> <p>14 me know when you're ready.</p> <p>15 (Pause)</p> <p>16 A. Okay.</p> <p>17 Q. Do you recognize Exhibit 251?</p> <p>18 A. Not necessarily offhand.</p> <p>19 Q. Have you seen it before?</p> <p>20 A. I believe at some point in the past.</p> <p>21 Q. When did you become aware of Exhibit 251?</p> <p>22 A. I don't remember exactly.</p> <p>23 Q. Do you know how it was brought to your</p> <p>24 attention?</p> <p>25 A. No, not -- I guess it was sent to Liam, is that</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 217</p> <p>1 right?</p> <p>2 Q. Exhibit 251 was sent to Liam O'Brien, yes.</p> <p>3 A. Okay.</p> <p>4 Q. So do you remember when you became aware of</p> <p>5 Exhibit 251?</p> <p>6 A. Not offhand, no.</p> <p>7 Q. Okay. Exhibit 251 is a request for the</p> <p>8 production of documents directed to you in connection</p> <p>9 with this litigation.</p> <p>10 And have you reviewed this specific documents</p> <p>11 requested prior to a moment ago?</p> <p>12 A. Have I?</p> <p>13 Q. Yes.</p> <p>14 A. I believe I must have.</p> <p>15 Q. It's a yes or no.</p> <p>16 Yes or no, have you reviewed the --</p> <p>17 MR. O'BRIEN: Objection to --</p> <p>18 A. I believe so.</p> <p>19 MR. O'BRIEN: Objection to the question. The</p> <p>20 witness can't be instructed to answer in one form or</p> <p>21 another.</p> <p>22 You can provide a full answer. Don't feel</p> <p>23 relegated to answering simply yes or no.</p> <p>24 Q. What did you do when you learned of</p> <p>25 Exhibit 251?</p>	<p style="text-align: right;">Page 219</p> <p>1 Q. Did you make recordings of calls with any of</p> <p>2 the customers listed in the attachment?</p> <p>3 A. I believe some.</p> <p>4 Q. Which ones do you believe you made recordings</p> <p>5 with?</p> <p>6 A. The few that were provided was Eugene Bernardo,</p> <p>7 Albert Claycomb, maybe Steve Hellwig, I'm not sure.</p> <p>8 Q. Any others?</p> <p>9 A. Potentially, I'm not -- I don't know.</p> <p>10 Q. Can you describe your practice for recording</p> <p>11 calls with customers when you were at J.D. Nicholas?</p> <p>12 A. I didn't have a set practice. They would urge</p> <p>13 us to record every so often. They wouldn't necessarily</p> <p>14 mandate, but every so often they would get on a kick to</p> <p>15 push people to recall -- to record.</p> <p>16 Q. Who is "they"?</p> <p>17 A. The owners. J.D. Nicholas.</p> <p>18 Q. And who were they?</p> <p>19 A. Dan Dvorznak, Jim Dolan, Nick Tsiketas.</p> <p>20 Q. And they encouraged all the brokers to record</p> <p>21 calls with customers?</p> <p>22 A. Yes.</p> <p>23 Q. And did you record calls with customers?</p> <p>24 A. From time to time.</p> <p>25 Q. Okay. And do you know why -- strike that.</p>
<p style="text-align: right;">Page 218</p> <p>1 A. I don't really recall exactly when I received</p> <p>2 this.</p> <p>3 Q. Okay. Can I direct your attention to page 3 of</p> <p>4 Exhibit 251?</p> <p>5 A. Okay.</p> <p>6 Q. Request number 8. You'll see it requests all</p> <p>7 documents concerning the customers and the customers are</p> <p>8 defined in Exhibit 251 to include the list of</p> <p>9 individuals included in the attachment on page 5.</p> <p>10 Do you see that?</p> <p>11 A. Okay.</p> <p>12 Q. Request number 9 of Exhibit 251 also calls for</p> <p>13 all documents concerning any communications between any</p> <p>14 customer and J.D. Nicholas.</p> <p>15 Do you see those?</p> <p>16 A. I see those.</p> <p>17 Q. Okay. Do you understand that exhibits -- I'm</p> <p>18 sorry, that request numbers 8 and 9 of Exhibit 251 call</p> <p>19 for the production of any recorded calls between you and</p> <p>20 any of the customers listed in the attachment?</p> <p>21 MR. O'BRIEN: Objection.</p> <p>22 A. I would understand that that's the case.</p> <p>23 Q. Did you make recordings of calls with your</p> <p>24 customers?</p> <p>25 A. Some.</p>	<p style="text-align: right;">Page 220</p> <p>1 When you said that they would encourage you</p> <p>2 every so often, how -- explain that a little bit more,</p> <p>3 what do you mean by every so often?</p> <p>4 A. Randomly, infrequently but randomly, they would</p> <p>5 have a meeting in the morning, quick, everybody has a</p> <p>6 recorder, if you have a recorder, when you get an order</p> <p>7 from a customer, make sure that you are recording</p> <p>8 conversations. Something along those lines.</p> <p>9 Q. Did they provide you with a recorder?</p> <p>10 A. I don't believe so. I don't know.</p> <p>11 Q. Did you buy one on your own?</p> <p>12 A. At one point I did.</p> <p>13 Q. Did you buy tapes for the purposes of making</p> <p>14 recordings?</p> <p>15 A. I don't think so, no.</p> <p>16 Q. How did you obtain tapes?</p> <p>17 A. What do you mean?</p> <p>18 Q. To make the recordings?</p> <p>19 A. I didn't.</p> <p>20 Q. How did you manually make the recordings?</p> <p>21 A. So just got a recording device.</p> <p>22 Q. How did the device work?</p> <p>23 A. Plugged into the wall.</p> <p>24 Q. Okay. And so how would you, when you intended</p> <p>25 to record a call with a customer, describe for us what</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 221</p> <p>1 you would physically do to effect that recording.</p> <p>2 A. It would be a small device, I guess something</p> <p>3 similar to that, connected to the phone and you hit</p> <p>4 record. There's a record button.</p> <p>5 Q. So there were no tapes contained within the</p> <p>6 device?</p> <p>7 A. No.</p> <p>8 Q. So where was the recording saved to?</p> <p>9 A. On the device.</p> <p>10 Q. On the device itself?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So then did you have more than one</p> <p>13 device that you used over time?</p> <p>14 A. Numerous, they were crappy devices, for lack of</p> <p>15 a better word. So --</p> <p>16 Q. So, yes?</p> <p>17 A. They would break often, and once they broke or</p> <p>18 crapped out, any information that was on them would</p> <p>19 pretty much be lost.</p> <p>20 Q. So would you, would the devices that you were</p> <p>21 using, would they run out of space?</p> <p>22 A. I'm not sure.</p> <p>23 Q. I guess what I'm getting confused is, I</p> <p>24 understand you had a device that was hooked up to the</p> <p>25 phone, correct?</p>	<p style="text-align: right;">Page 223</p> <p>1 used?</p> <p>2 A. I believe so, yes.</p> <p>3 Q. Okay. And then after one of them was -- would</p> <p>4 you finish with one or why would you move on to the</p> <p>5 second one?</p> <p>6 A. They would potentially get lost, they weren't</p> <p>7 well-made devices in the first place. They were made by</p> <p>8 Radio Shack. They would just work one day, not work the</p> <p>9 next, you couldn't turn it on. For those reasons.</p> <p>10 Q. And then you maintained them at your office at</p> <p>11 J.D. Nicholas?</p> <p>12 A. Yeah, I believe that they might have even</p> <p>13 maintained them or took them in possession.</p> <p>14 Q. When you left J.D. Nicholas, what did you do</p> <p>15 with those recording devices?</p> <p>16 A. I didn't take anything. They didn't allow us</p> <p>17 to come back into the office, no.</p> <p>18 Q. Okay. Did you make any effort to organize or</p> <p>19 make a list of who the customers were that were, that</p> <p>20 you had conversations with that were recorded to a</p> <p>21 particular device?</p> <p>22 A. No.</p> <p>23 Q. So you have no -- you had no system for</p> <p>24 organizing the recordings?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 222</p> <p>1 A. Um-hmm.</p> <p>2 Q. And you would press play when you wanted to</p> <p>3 record a call?</p> <p>4 A. I would press record.</p> <p>5 Q. Record. Okay.</p> <p>6 So then when -- where -- was it saved to the</p> <p>7 device itself or was there some kind of tape?</p> <p>8 A. Yes, it would save to. It was kind of like an</p> <p>9 MP3 type of device, I guess.</p> <p>10 Q. So if it wasn't a tape, was it some kind of</p> <p>11 digital recording?</p> <p>12 A. I believe so.</p> <p>13 Q. Was it saved to your computer?</p> <p>14 A. No.</p> <p>15 Q. Okay. So after you record a call with a</p> <p>16 customer, how would you maintain those recordings?</p> <p>17 A. They would stay on the device.</p> <p>18 Q. And what would you do with the devices?</p> <p>19 A. Keep them by my desk.</p> <p>20 Q. So you would go through -- you went through</p> <p>21 numerous devices, correct?</p> <p>22 A. I think maybe two or three and either one or</p> <p>23 two of them died.</p> <p>24 Q. So during your entire time at J.D. Nicholas,</p> <p>25 you had one or two or possibly three devices that you</p>	<p style="text-align: right;">Page 224</p> <p>1 Q. If you wanted to go back and locate a</p> <p>2 particular recording with a particular customer, how</p> <p>3 would you go about doing that?</p> <p>4 A. At this point? I couldn't.</p> <p>5 Q. At any point?</p> <p>6 A. I would pretty much, I guess, listen to the</p> <p>7 whole thing. There would be individual files, but just</p> <p>8 listed by file number one, number two, number three. So</p> <p>9 like that.</p> <p>10 Q. What does file number one, number two, number</p> <p>11 three mean?</p> <p>12 A. Each individual recording.</p> <p>13 Q. And would you number them one, two, three?</p> <p>14 A. No, the device would do it automatically.</p> <p>15 Q. How would you be able to look for recording</p> <p>16 number two, for example, on the device?</p> <p>17 A. You have to manually scroll through it.</p> <p>18 Q. On the device?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Did you search for any recordings with</p> <p>21 any of the customers listed in the attachment to</p> <p>22 Exhibit 251?</p> <p>23 A. At this point in time?</p> <p>24 Q. At any point in time.</p> <p>25 A. I didn't have any documents from J.D. Nicholas</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 225</p> <p>1 when we left. They kept everything that was in our 2 drawers. They didn't allow us to take anything. 3 Q. So at any point, you've never searched through 4 your devices to locate recordings with any of the 5 customers listed on it, the attachment? 6 A. I didn't have any information in my possession 7 to. 8 Q. So you've never looked for any recordings with 9 customers listed in the attachment, is that correct? 10 A. Directly? No. Because nothing was in my 11 possession. Indirectly, I came across one device that I 12 apparently must have brought home. 13 Q. What do you mean indirectly? 14 A. I was cleaning out my garage. 15 Q. Okay. So you were cleaning out your garage at 16 home and you came across a recording device? 17 A. That's correct. 18 Q. And it was one of the recording devices that 19 you used when you were at J.D. Nicholas? 20 A. That's correct. 21 Q. And -- but you have no recollection of when or 22 why you brought it home? 23 A. I don't. 24 Q. Okay. And you said it was located in your 25 garage?</p>	<p style="text-align: right;">Page 227</p> <p>1 A. After the fact. 2 Q. Did -- so in addition to locating that one 3 recording device in your garage, what effort, what other 4 efforts have you made to search for documents or 5 recordings responsive to Exhibit 251? 6 A. Originally, I have a small file cabinet in my 7 house that I looked through. That would be the only 8 spot for any type of work documents, but there was 9 nothing related. 10 Q. And did you -- you testified before that you 11 had more than one recording device that you used at J.D. 12 Nicholas. 13 A. Um-hmm. 14 Q. Did you leave those at J.D. Nicholas when you 15 left the firm? 16 A. Yes. Yeah, they wouldn't allow us to take 17 anything. 18 Q. Okay. Did anyone else assist you in your 19 search for recorded calls with customers, and 20 specifically the customers listed in the attachment? 21 A. No. 22 Q. Do you know why you brought the device home? 23 A. I don't know why, no. Potentially, somehow, 24 maybe I was changing it out with a different one. I 25 have no idea. I have a habit of taking pens home and</p>
<p style="text-align: right;">Page 226</p> <p>1 A. That's right. 2 Q. When did you locate it? 3 A. Mid-to-late summer, maybe July. 4 Q. Of 2017? 5 A. Of this year. 6 Q. What were you doing in your garage when you 7 located it? 8 A. I was actually organizing. My daughter got a 9 bike, I was hanging a bike, pretty much just organizing 10 everything that was disorganized for a long time. 11 Q. Where was the recording located within your 12 garage? 13 A. It was in a bin, a storage bin. There was a 14 lot of stuff in the bin from my car and my wife's car, 15 summer stuff from years ago, fire wood, for some reason, 16 I don't know why that was in the bin. I don't know why 17 it was in there, but potentially it was in my car, 18 maybe. 19 Q. Were there any other documents related to your 20 time at J.D. Nicholas in the bin? 21 A. Nothing. 22 Q. What did you do when you located the recording 23 device? 24 A. I had called Liam to let him know. 25 Q. Did you listen to the recordings?</p>	<p style="text-align: right;">Page 228</p> <p>1 stuff on accident. It could just be that. 2 Q. Did you find -- do you recall in, on July 13th 3 of 2017 appearing at this office for a deposition in 4 this matter? 5 A. Yes. 6 Q. Was it before or after that deposition that you 7 located the recording device in the bin in your garage? 8 A. It would have been after. 9 Q. Why do you think that? 10 A. Because I remember cleaning out the garage 11 towards the, I guess it must have been the beginning of 12 August. It was right before we went away, excuse me, we 13 went away to a water park upstate New York. And we went 14 there in mid, the third week of August, so it was right 15 before that. Beginning of August. 16 Q. So you believe that the recording device that 17 you located in your garage had been there since the time 18 that you had left J.D. Nicholas? 19 A. Potentially, yeah. 20 Q. But you have no recollection of bringing it 21 home or how it otherwise got to your home? 22 A. No. 23 Q. We can put Exhibit 251 aside. 24 Do you recall that the SEC had an investigation 25 titled In the Matter of J.D. Nicholas & Associates, it</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 229</p> <p>1 was, our internal number was NY 8919?</p> <p>2 A. I do.</p> <p>3 Q. And do you recall testifying in connection with</p> <p>4 that investigation?</p> <p>5 A. I do.</p> <p>6 Q. And do you recall that the SEC had issued</p> <p>7 document subpoenas to J.D. Nicholas in connection with</p> <p>8 that investigation?</p> <p>9 A. I didn't know that, no.</p> <p>10 Q. You were not aware that the SEC had issued</p> <p>11 document subpoenas to J.D. Nicholas?</p> <p>12 A. I don't believe I would be privy to that</p> <p>13 information.</p> <p>14 Q. Did anyone from J.D. Nicholas ever ask you to</p> <p>15 make an effort to locate documents in connection with an</p> <p>16 SEC investigation?</p> <p>17 A. Not that I know of, no.</p> <p>18 Q. You don't recall anyone from J.D. Nicholas ever</p> <p>19 coming to you and saying, please look for documents</p> <p>20 concerning such and such customers in connection with an</p> <p>21 investigation?</p> <p>22 A. No.</p> <p>23 MS. PAULEY: Can we mark this document as</p> <p>24 Exhibit 252, please.</p> <p>25 (Transcript of Gregory T. Dean dated July 13,</p>	<p style="text-align: right;">Page 231</p> <p>1 Q. Do you know if any of the statements made at</p> <p>2 your deposition on July 13th, if any of the statements</p> <p>3 made were false?</p> <p>4 A. I don't believe so.</p> <p>5 Q. Have you been asked to sign Exhibit 252?</p> <p>6 A. Sign it, no, I don't think so.</p> <p>7 Q. If you could please go to page 203 of</p> <p>8 Exhibit 252. Let's see, there's four pages per page, so</p> <p>9 it's actually page 51 of the document.</p> <p>10 A. Is this it (indicating)?</p> <p>11 Q. Yes, that's correct.</p> <p>12 So if you could take a look on page 203.</p> <p>13 A. Okay.</p> <p>14 Q. About two-thirds of the way down the page,</p> <p>15 there's a question on line 18 that David Stoelting asked</p> <p>16 you. It said, "No, all I'm asking is whether you did</p> <p>17 any search in your home or basement or wherever you keep</p> <p>18 stuff or on your computers for documents that were</p> <p>19 called for in this request."</p> <p>20 Do you see that?</p> <p>21 A. Um-hmm.</p> <p>22 Q. And you responded, "I know I had looked. I'll</p> <p>23 continue to actively look. I mean, a lot of the</p> <p>24 information was kept by them when we left."</p> <p>25 Do you see that?</p>
<p style="text-align: right;">Page 230</p> <p>1 2007 in the matter of Securities and Exchange</p> <p>2 Commission v. Gregory T. Dean, et al., marked</p> <p>3 Exhibit 252 for identification)</p> <p>4 Q. So, again, you testified a moment ago that you</p> <p>5 recall sitting for a deposition in this matter on July</p> <p>6 13th of 2017, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And my colleague David Stoelting asked you</p> <p>9 questions at that deposition?</p> <p>10 A. Yes.</p> <p>11 Q. And you knew that you were under oath at that</p> <p>12 deposition, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Have you -- Exhibit 252 is a transcript of your</p> <p>15 deposition.</p> <p>16 Have you seen this before?</p> <p>17 A. Potentially.</p> <p>18 Q. Why do you say potentially?</p> <p>19 A. I believe we ordered it, right?</p> <p>20 MR. O'BRIEN: You have to base it on your own</p> <p>21 knowledge.</p> <p>22 A. Yeah, I believe we had ordered it and I read</p> <p>23 through it.</p> <p>24 Q. So you read through Exhibit 252?</p> <p>25 A. I believe so, yes.</p>	<p style="text-align: right;">Page 232</p> <p>1 A. I see that.</p> <p>2 Q. Okay. When you say that "I know I had looked,"</p> <p>3 can you describe what or how you looked for documents?</p> <p>4 A. The one file cabinet that I had for business</p> <p>5 purposes, I looked through. It was just outermost</p> <p>6 related stuff. Yeah. There was piles of paper that</p> <p>7 were my wife's that I looked through that were right</p> <p>8 next to it, but that's what I looked through.</p> <p>9 Q. Do you have a home computer?</p> <p>10 A. I do.</p> <p>11 Q. Do you maintain any files in connection with</p> <p>12 J.D. Nicholas on your home computer?</p> <p>13 A. No.</p> <p>14 Q. Did you, other than looking in that one file</p> <p>15 cabinet, did you look anywhere else for documents</p> <p>16 responsive to the document request?</p> <p>17 A. I looked in, I know I looked in a night table</p> <p>18 next to my bed, but...</p> <p>19 Q. Why did you look there?</p> <p>20 A. It just would be a spot where I would throw</p> <p>21 random stuff that I just happened to have in my pockets.</p> <p>22 Q. Anywhere else?</p> <p>23 A. No. Not that I know of.</p> <p>24 Q. And then the second, you can see on line 25,</p> <p>25 Mr. Stoelting asked you another question. He said,</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 233</p> <p>1 "Right, so you can't -- you can't give us anything that 2 you don't have. So we know that. But the question is 3 just, you know, to the extent you have anything now that 4 was within the scope of those requests, whether you did 5 make an effort to look for it and if you found anything, 6 to give it to your counsel." 7 And you responded, "I did make an effort. 8 Continuing to make an effort. I will continue." 9 Do you see that? 10 A. Yes. 11 Q. When you said that you would continue to make 12 an effort, what did you intend to do? 13 A. To address other areas that potentially there 14 could be information, which obviously the garage in one 15 of the storage bins was. 16 Q. So you intended to look through the bins in 17 your garage as of July 13? 18 A. Not as of that date. But there was just a lot 19 of stuff, old stuff that was in the garage in bins. My 20 wife has a habit of putting stuff in bins. 21 Q. And why hadn't you looked through any of those 22 bins prior to July 13? 23 A. They were labeled, one was labeled Christmas 24 decorations and another was labeled Montauk. Which we 25 had, I just didn't assume that there would be anything</p>	<p style="text-align: right;">Page 235</p> <p>1 Q. What do you mean you would assume so? 2 A. Well, you're asking me if I recalled on July 3 13th. I would assume I recalled it. 4 Q. You worked at J.D. Nicholas prior to 2014, 5 right, you left in November of 2014? 6 A. Correct. 7 Q. Okay. So when you came for your deposition in 8 July of 2017, you had already left J.D. Nicholas, right? 9 A. Correct. 10 Q. And you knew therefore that when you were at 11 J.D. Nicholas, that you had recorded calls with 12 customers? 13 A. Some. 14 Q. Some, what do you mean some? 15 A. Recorded some conversations with customers. 16 Q. Right, you had recorded conversations with 17 customers? 18 A. Okay. 19 Q. Correct? 20 A. Yes. 21 Q. Okay. So did you intentionally conceal from us 22 during your deposition in July of 2017 that you had 23 recorded calls with customers that you had not produced 24 to the SEC? 25 MR. O'BRIEN: Objection. Misstates the evidence.</p>
<p style="text-align: right;">Page 234</p> <p>1 relevant in them. 2 Q. When you sat through your deposition on July 3 13th, did you recall having recorded calls with 4 customers at J.D. Nicholas? 5 A. I know -- 6 MR. O'BRIEN: Objection to the form of the question. 7 I think it implies that the question was asked and I 8 don't believe it was. 9 Q. When you were sitting through your deposition 10 on July 13th, did you recall having recorded calls with 11 your customers at J.D. Nicholas? 12 MR. O'BRIEN: Same objections. 13 A. I can't remember if I recalled on July 13th. 14 Q. You knew, though, you had recorded calls with 15 customers, though, correct? 16 MR. O'BRIEN: Objection. Vague, ambiguous. 17 A. I can't answer that. 18 Q. I mean, you testified before that you had 19 recording devices that you used at J.D. Nicholas, 20 correct? 21 A. That's correct. 22 Q. Okay. Then you knew in July of 2017 that there 23 had been recording devices that you had used to record 24 calls with customers at J.D. Nicholas, correct? 25 A. I would assume so.</p>	<p style="text-align: right;">Page 236</p> <p>1 Argumentative. Objection to form. Lack of foundation. 2 No evidence that that question was even asked during the 3 deposition. But you can go ahead and answer it. 4 MS. PAULEY: We'll get there. 5 Q. You can answer. 6 A. Can you rephrase that? 7 Q. Did you intentionally conceal from the SEC when 8 you were here in July for your deposition that you had 9 recorded calls with customers at J.D. Nicholas, the 10 customers that were listed in the attachment to the 11 document request? 12 A. No. 13 Q. 14 MS. PAULEY: Can we please mark another document. 15 This is going to be Exhibit 253. 16 (Transcript of Gregory Dean dated November 14, 17 2014 in the matter of J.D. Nicholas & 18 Associates, Inc., marked Exhibit 253 for 19 identification) 20 Q. So Exhibit 253 is the transcript of your 21 testimony that you gave on November 14th of 2014 in 22 connection with the SEC's investigation that we 23 mentioned a moment ago titled J.D. Nicholas & 24 Associates, Inc., it was file number NY 8919. 25 And, again, you testified earlier that you</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 237</p> <p>1 recall sitting for your testimony back in November of 2 2014, correct? 3 A. Yes. 4 Q. Okay. And I asked you questions during that 5 testimony session? 6 A. Yeah, you and a few others. 7 Q. And, again, you knew that you were under oath 8 when you appeared for testimony before the SEC, correct? 9 A. Yes. 10 Q. Have you seen Exhibit 253 before? 11 A. No. 12 Q. You've never reviewed the transcript of your 13 testimony before the SEC? 14 A. No. 15 Q. Do you believe any of the answers you gave when 16 you testified before the SEC in November of 2014 were 17 false? 18 MR. O'BRIEN: Objection. Form, foundation. 19 Q. You can answer. 20 A. I don't believe so. 21 Q. Okay. Do you recall at your testimony in 22 November of 2014, that the staff asked you questions 23 about whether you recorded calls with customers? 24 A. Not necessarily, no. 25 Q. If we can please turn to page 83 and 84 of the</p>	<p style="text-align: right;">Page 239</p> <p>1 was every so often when they wanted to us record for 2 some odd reason, they meaning J.D. Nicholas. 3 Q. Did J.D. Nicholas give you any instructions as 4 to when you should or when you should not record? 5 A. I know it was for -- I'm trying to recall. I 6 remember something along the lines of when trades were 7 placed. So when you get an order for a trade, make sure 8 you have that recording, but they would have these 9 meetings once in a quarter maybe. So that was the 10 reason why. 11 Q. What would be discussed at the meetings? 12 A. The need to record. They weren't very 13 well-conducted meetings. They would be just kind of off 14 the cuff one morning because one of them had some fire 15 under their ass for whatever reason. 16 Q. And did you have any personal practice for when 17 you chose to record versus when you did not? 18 A. Not necessarily. 19 Q. Did you record calls only with certain 20 customers but not with others? 21 A. Not that I can think of, no. 22 Q. So how would you decide when to hit record and 23 when not to? 24 A. When I -- I guess when I remembered to. 25 Q. Okay. Do you see the next question down on</p>
<p style="text-align: right;">Page 238</p> <p>1 transcript. It's page 21 of Exhibit 253. 2 MR. O'BRIEN: I will just object to the use of the 3 transcript under the Federal Rules of Civil Procedure 4 and point out that it doesn't appear that the transcript 5 was ever reviewed or signed by the witness. 6 Q. Do you see page 83? 7 A. Yes. 8 Q. Halfway down the page of 83 it's on line 13, do 9 you see a question that says, "Do you record any of your 10 calls?" 11 A. Um-hmm. I do. 12 Q. Okay. And you answered no, do you see that? 13 A. I do. 14 Q. Why did you respond no? 15 A. I don't know. Maybe it was at that time I was 16 referring to. 17 Q. And do you see the question below that, it 18 says, "Have you ever?" And you answered, "Very rarely." 19 Do you see that? 20 A. Yes. 21 Q. What do you mean by that -- what did you mean 22 by that? 23 A. That was typically what I did, rarely, I would 24 generally speaking, forget to record and, again, it 25 wasn't a practice that was mandated in the office. It</p>	<p style="text-align: right;">Page 240</p> <p>1 line 18, it says, "Under what circumstances do you 2 record calls?" 3 Do you see that? 4 A. Um-hmm. 5 Q. Okay. And then you answered, "Nothing in 6 particular. I had a cassette recorder at one time, and 7 I actually forgot to use it a lot of times. I tried to 8 make it into my process, but I kept forgetting to use 9 it. There's no necessary standard." 10 Do you see that? 11 A. Yes. 12 Q. Okay. Is that still accurate as far as you 13 recall from your time at J.D. Nicholas? 14 MR. O'BRIEN: Objection. Vague and ambiguous. 15 A. I assume so. 16 Q. Do you recall, if I was to ask you that 17 question right now, under what circumstances did you 18 record calls at J.D. Nicholas, how would you answer it? 19 A. For the most part, like that. Yeah, I mean, I 20 had a cassette recorder at one point at the very 21 beginning. It never worked and I replaced it with a 22 different recorder. That's all. That's the only 23 difference. 24 Q. And then do you see the question below it says, 25 "Do you still sometimes record your calls?" And you</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 241</p> <p>1 answered no.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And why, had you stopped at some point</p> <p>5 in time recording calls?</p> <p>6 A. This was right before we had left J.D.</p> <p>7 Nicholas.</p> <p>8 Q. Okay.</p> <p>9 A. So at that point, yeah, we were in the process</p> <p>10 of leaving.</p> <p>11 Q. Okay. So that's why you stopped recording</p> <p>12 calls?</p> <p>13 A. I believe we left maybe a week after. I don't</p> <p>14 think that there were many calls at that point.</p> <p>15 Q. And you can see the question below that, it</p> <p>16 says, "When did you stop recording any calls?" And you</p> <p>17 answered, "When I threw the cassette player out."</p> <p>18 And then you were asked, "When was that?" And</p> <p>19 you said, "Three years ago maybe, roughly."</p> <p>20 Do you see that?</p> <p>21 A. Okay.</p> <p>22 Q. Yes, you see that?</p> <p>23 A. I do.</p> <p>24 Q. Okay. So had you thrown a cassette player out</p> <p>25 three years prior to November of 2014?</p>	<p style="text-align: right;">Page 243</p> <p>1 litigation?</p> <p>2 A. I believe so. Unless I somehow find another</p> <p>3 recorder, but I believe so.</p> <p>4 Q. Do you intend to continue searching?</p> <p>5 A. Yes.</p> <p>6 Q. Where else would you search?</p> <p>7 A. I would have no idea. I mean, I would</p> <p>8 definitely make Liam aware if I found something.</p> <p>9 Q. Is there anyplace you can think of sitting here</p> <p>10 right now that you could look that could turn up</p> <p>11 recorded calls with customers listed in the attachment?</p> <p>12 A. Probably one of J.D. Nicholas's owner's houses.</p> <p>13 Q. Why would recording devices be at one of their</p> <p>14 houses?</p> <p>15 A. Because they kept everything that we had in and</p> <p>16 on our desks.</p> <p>17 Q. When you left J.D. Nicholas in November of</p> <p>18 2014, were the recording devices still at your desk?</p> <p>19 A. Everything that was on my desk was there.</p> <p>20 Q. Were the recording devices on your desk?</p> <p>21 A. I don't remember visually what was on my desk,</p> <p>22 but whatever was on my desk was there.</p> <p>23 Q. What do you remember being on your desk?</p> <p>24 A. A phone, leads, folders with papers in them.</p> <p>25 Computer, we eventually got, but they wiped them out</p>
<p style="text-align: right;">Page 242</p> <p>1 A. The date, I assume the date is probably wrong.</p> <p>2 I don't know. I really don't remember.</p> <p>3 Q. Was there a point in time in which you threw a</p> <p>4 cassette player out?</p> <p>5 A. I threw a few of those digital recorders out</p> <p>6 and a cassette player. I mean, I guess a cassette</p> <p>7 player is not the right word.</p> <p>8 Q. What would be the right word?</p> <p>9 A. A recorder.</p> <p>10 Q. The same recording device that you were talking</p> <p>11 about testifying to earlier?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So do you continue to record calls --</p> <p>14 did you continue to record calls after you left J.D.</p> <p>15 Nicholas?</p> <p>16 A. I have, a handful, yeah.</p> <p>17 Q. Going back to Exhibit 251, the document</p> <p>18 request, the first exhibit we looked at, have all</p> <p>19 recordings of calls with customers listed on the</p> <p>20 exhibit, attachment to Exhibit 251 been produced?</p> <p>21 Take your time and look at each of the</p> <p>22 customers.</p> <p>23 A. Okay. What was the question?</p> <p>24 Q. Have all recordings of calls with the customers</p> <p>25 listed in the attachment been produced in this</p>	<p style="text-align: right;">Page 244</p> <p>1 completely. Everything that was in my drawers, I just</p> <p>2 don't remember what was in the drawers.</p> <p>3 Q. Where did you save the recording devices in</p> <p>4 your desk when you were at J.D. Nicholas?</p> <p>5 A. They would be on my desk or in one of the</p> <p>6 drawers.</p> <p>7 Q. Were there some on and some in your drawers?</p> <p>8 A. I don't remember. Potentially, yeah.</p> <p>9 Q. Do you believe there were recording devices</p> <p>10 either on your desk or in your drawers when you left?</p> <p>11 A. Might have been.</p> <p>12 Q. Okay. Okay, we're going to listen to the</p> <p>13 recordings that you recently produced.</p> <p>14 MS. PAULEY: Can we please mark this as Exhibit 254.</p> <p>15 (Audio transcription in the matter of JD</p> <p>16 Nicholas and Associates marked Exhibit 254 for</p> <p>17 identification)</p> <p>18 Q. So Exhibit 254 is a transcript of the</p> <p>19 recordings that your counsel produced to us. I believe,</p> <p>20 I believe it was on October 4th, but I could be wrong</p> <p>21 about that, of 2016.</p> <p>22 So what we're going to do is, I'll play each</p> <p>23 recording and you can listen to it and then we'll go</p> <p>24 over some of the questions and answers that were in the</p> <p>25 recording using the transcript.</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 245</p> <p>1 A. Okay.</p> <p>2 Q. So I'll play the whole thing through one time.</p> <p>3 We're going to skip the first one. So we'll be</p> <p>4 beginning on page 6 of Exhibit 254 with the recording</p> <p>5 that's titled Albert Claycomb, JDN recording, Claycomb</p> <p>6 1/8/14.</p> <p>7 (Recording played)</p> <p>8 Q. Did you recognize your voice in that recording?</p> <p>9 A. Yes.</p> <p>10 Q. Who was the other voice?</p> <p>11 A. Al Claycomb.</p> <p>12 Q. And how do you know that?</p> <p>13 A. I just recall his voice.</p> <p>14 Q. Do you see on the transcript on page 6 that</p> <p>15 this recording has a title of Albert Claycomb, JDN</p> <p>16 recording, Claycomb 1/8/14?</p> <p>17 Do you see that on page 6 of Exhibit 254?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know who names this recording?</p> <p>20 A. That would be me.</p> <p>21 Q. And how did you do that?</p> <p>22 A. When I had spoke to Liam, he told me to put it</p> <p>23 all on a disk. So I transferred all the information</p> <p>24 onto a disk and sent it to him.</p> <p>25 Q. So you transferred the recordings that were on</p>	<p style="text-align: right;">Page 247</p> <p>1 device?</p> <p>2 A. I believe I did.</p> <p>3 Q. So then how do you -- this was just in August,</p> <p>4 you said, right?</p> <p>5 A. Yes.</p> <p>6 Q. How did you identify the recordings with Albert</p> <p>7 Claycomb, Eugene Bernardo and Steve Hellwig?</p> <p>8 A. Because I actually remember the conversations.</p> <p>9 Q. You remember those specific conversations?</p> <p>10 A. I remember the voice, the client, the</p> <p>11 conversation.</p> <p>12 Q. So did you listen to the entire device, all of</p> <p>13 the recordings on the entire device from beginning to</p> <p>14 end?</p> <p>15 A. I did.</p> <p>16 Q. Okay. And the only conversations that were on</p> <p>17 there were the ones with Albert Claycomb, Eugene</p> <p>18 Bernardo, Steve Hellwig and the one with your wife?</p> <p>19 A. There's a few of my wife. One when I called GM</p> <p>20 financing from for my wife's car. Yeah, a lot of just</p> <p>21 stuff that wasn't relevant.</p> <p>22 Q. What do you mean not relevant?</p> <p>23 A. It had nothing to do with J.D. Nicholas.</p> <p>24 Q. So there were no other calls with any other</p> <p>25 J.D. Nicholas customers other than those three customers</p>
<p style="text-align: right;">Page 246</p> <p>1 the device that you found in the garage onto a disk?</p> <p>2 A. Correct.</p> <p>3 Q. And you were the one who titled each of the</p> <p>4 recordings?</p> <p>5 A. Yes.</p> <p>6 Q. Were there other recordings on that disk other</p> <p>7 than the ones that you produced in this litigation?</p> <p>8 A. No.</p> <p>9 Q. There were no recordings of any other</p> <p>10 customers?</p> <p>11 A. No.</p> <p>12 Q. On the recording device?</p> <p>13 A. Potentially there were. The device wasn't</p> <p>14 good. A lot of the times when you record afterwards, it</p> <p>15 would be just fuzz you would hear in the background.</p> <p>16 There are a couple of recordings of me and my wife that</p> <p>17 somehow I guess I recorded, but...</p> <p>18 Q. So there were no -- other than Albert Claycomb,</p> <p>19 Eugene Bernardo and Steven Hellwig, there were no</p> <p>20 recorded calls with any other customers?</p> <p>21 A. I mean, potentially there were. Nothing that I</p> <p>22 remember, though, no.</p> <p>23 Q. I guess I don't understand what you mean by</p> <p>24 potentially.</p> <p>25 Did you listen to all of the recordings on the</p>	<p style="text-align: right;">Page 248</p> <p>1 on the device that you found in your garage?</p> <p>2 A. There potentially could have been, but I</p> <p>3 couldn't make out who or what it was.</p> <p>4 Q. Okay. So there were other calls, you just</p> <p>5 couldn't hear, you couldn't understand who the voices</p> <p>6 were on the calls?</p> <p>7 A. Correct, or I couldn't make out the actual call</p> <p>8 itself.</p> <p>9 Q. What do you mean you couldn't make out --</p> <p>10 A. The quality of it was not good.</p> <p>11 Q. Okay. So the only calls that you could</p> <p>12 understand were the ones with Albert Claycomb, Eugene</p> <p>13 Bernardo, Steve Hellwig, your wife, and one, I think you</p> <p>14 said with who, GMC?</p> <p>15 A. Um-hmm, correct.</p> <p>16 Q. And none of the other recordings that were on</p> <p>17 that, that were saved to that device, you couldn't</p> <p>18 understand who was talking?</p> <p>19 A. From what I remember, there was about an</p> <p>20 hour-long recording of nothing, which I had a habit of</p> <p>21 leaving the device on when the conversation was over and</p> <p>22 it would just keep recording. So it was just white</p> <p>23 noise. Stuff like that.</p> <p>24 Q. Okay. But no other J.D. Nicholas customers?</p> <p>25 A. Not that I remember, no.</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 249</p> <p>1 Q. Okay. And so you titled this particular 2 recording Albert Claycomb, JDN recording, Claycomb 3 1/18/14, correct? 4 A. Yeah, I guess so. 5 Q. So how did you know that the recording was -- I 6 take it 1/18/14 means that was the date that the call 7 was recorded on? 8 A. Yeah, or the date that would be on the digital 9 screen on the device. 10 Q. So on the screen on the device it would say the 11 date that the recording was made? 12 A. Correct. 13 Q. So that's how you knew that this call had taken 14 place on January 8th of 2014? 15 A. Yeah. That doesn't mean the date's correct, 16 but that's what it says. 17 Q. Why would you -- what would give you any reason 18 to believe that it was incorrect? 19 A. If it ran out of batteries, for, you know, 20 reasons, I guess, that the recorder wouldn't be 21 functioning properly. 22 Q. Okay. But you made no effort to try and 23 determine when the conversation actually took place? 24 A. No. 25 Q. Okay. So the 1/18/14 was just based purely on</p>	<p style="text-align: right;">Page 251</p> <p>1 A. Yes. 2 Q. And Akamai? 3 A. Yes. 4 Q. And Criteo? 5 A. Yes, I believe so. 6 Q. And in this particular call, what were you 7 recommending to Mr. Claycomb? 8 A. Well, I mean, I do remember this call. It was 9 after he was recommending to not trade anymore and hold 10 these stocks. I don't remember how long it was, but I 11 remember a number of months and he didn't want to sell 12 them, he wanted to hold them and they kept going down. 13 Q. Do you have an understanding as to why he 14 wanted to hold them? 15 A. I don't. He changed his mood like the wind. 16 Q. And so you believed it was in his best 17 interest, or at least you believed that Mr. Claycomb 18 should be selling these three positions? 19 A. I don't really remember. 20 Q. Well, take a look at the transcript. Take as 21 much time as you need. 22 A. Um-hmm. 23 Q. In the transcript of the recording from January 24 8 of 2014, are you recommending to Mr. Claycomb that he 25 sell the positions in Voxeljet, Akamai and Criteo?</p>
<p style="text-align: right;">Page 250</p> <p>1 the date that was listed on the recording device in 2 connection with that call? 3 A. Yes. 4 Q. And, again, how was this recording made? 5 A. It was from a digital device that would have 6 been connected to my phone at J.D. Nicholas. 7 Q. Okay. And, again, this is something that when 8 the call with Mr. Claycomb was taking place, you pressed 9 record? 10 A. Yes. 11 Q. And do you know how this recording was 12 retained? 13 A. No, I don't. 14 Q. It was retained on the recording device, 15 correct? 16 A. Right. 17 Q. Okay. But you don't have any recollection as 18 to when or how that recording device came home to your 19 home? 20 A. I don't know, I'm sorry. 21 Q. And this is the same recording device that was 22 located in your garage, correct? 23 A. Yes. 24 Q. Did you recommend trades to Mr. Claycomb in 25 Voxeljet?</p>	<p style="text-align: right;">Page 252</p> <p>1 A. No, I don't believe I was recommending 2 anything. I think he was recommending to sell. 3 Q. I'm sorry. That's -- you testified, I thought, 4 the exact opposite a moment ago. 5 Explain to me what was happening. 6 A. I think he was recommending that he wanted to 7 sell. 8 Q. I thought you said a moment ago that he was the 9 one who wanted to hold the positions. 10 A. He was, and then on this conversation, I 11 believe, is the conversation he said he wanted to sell. 12 Q. Okay. So he had been wanting to hold the 13 positions, but in this particular conversation, he was 14 telling you he wanted to sell? 15 A. I believe so, yes. 16 Q. Okay. And let's turn to page 7. 17 So if you look halfway down the page on line 18 13, do you see where it says "But those other two 19 companies, I mean, those -- those were the two stocks 20 that we had in the account when we wanted to put the 21 brakes on, and unfortunately, I mean, we're holding two 22 stocks that haven't done shit, and the Voxeljet is the 23 only one that's at least been trading higher." 24 Do you see that? 25 A. Yes.</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

Page 253

1 Q. So "put the brakes on" is a phrase you used,
2 correct?
3 A. That's correct.
4 Q. And what did you mean by that?
5 A. When we had those three positions, when I say
6 "we," I'm really meaning him. It was his suggestion to
7 put the brakes on, to stop trading in the account, to
8 hold.
9 Q. What was your understanding as to why he wanted
10 to put the brakes on in the account?
11 A. He would switch from one theory to another all
12 the time.
13 Q. Was it because he believed the account was
14 being traded too actively?
15 A. He might believe that. I mean, at the point
16 when he wanted to put the brakes on, the account was up,
17 I think, close to 100 percent.
18 Q. That's a separate answer from what my question
19 was.
20 My question was, had Mr. Claycomb expressed an
21 interest in putting the brakes on in the account because
22 the account had been traded too actively?
23 MR. O'BRIEN: Objection. Vague and ambiguous.
24 A. I don't know. I don't really know.
25 Q. You don't know or you don't recall?

Page 254

1 A. I don't know and I don't recall.
2 Q. Did Mr. Claycomb ever give you an instruction
3 that he wanted to put the brakes upon because the
4 account was being traded too actively?
5 A. I don't remember.
6 Q. If you go to the paragraph below that beginning
7 at line 19, it says, "Yeah. And we're kind of -- we are
8 where we are. I mean, I get it, I understand where you
9 are, you want the less trading, and I realize that."
10 Do you see that?
11 A. Um-hmm.
12 Q. Had Mr. Claycomb told you that he wanted his
13 account to be traded less frequently?
14 A. I would assume so from that statement.
15 Q. Do you have any recollection of what the
16 circumstances were of that instruction had he given it?
17 A. I don't really remember. I do remember that
18 when we bought those three positions, his account was up
19 significantly. And then he became angry as those three
20 positions were going lower, still did not want to sell
21 them because he wanted to hold them for reason. And
22 this, I believe, was that conversation where he wanted
23 to just sell them.
24 Q. If we could turn to page 8, middle of the page
25 on line 13, it says unidentified male, who I take it to

Page 255

1 be Albert Claycomb. And he says, "Save a drop of it for
2 (inaudible) Akamai and Criteo, I think I want to pull
3 back out of. And yeah. I just want to stick with the
4 program and -- and I want to have a little bit more
5 input and be a little bit more involved."
6 Do you see that?
7 A. Yes.
8 Q. What's your understanding of what Mr. Claycomb
9 was saying to you with that sentence?
10 A. I don't know.
11 Q. How did you interpret what he was saying?
12 A. I don't remember now.
13 Q. Sitting here today, how do you interpret what
14 he's saying in that sentence?
15 MR. O'BRIEN: Objection. Relevance.
16 A. I still don't know. He was extremely involved
17 all the time.
18 Q. When you hear somebody say to you, such as Mr.
19 Claycomb is saying right here, he says, "I want to have
20 a little bit more input and be a little bit more
21 involved," what does that mean to you?
22 A. That he wants to have a little bit more input
23 and be a little bit more involved.
24 Q. And why would he say that?
25 MR. O'BRIEN: Objection.

Page 256

1 A. You would have to ask him. I have no idea.
2 Q. If you could turn to page 9, and this is a
3 continuation from, you can see it, at the bottom of page
4 8, this is statements that you are making and at the top
5 of page 9 on line 2 it says, or you're saying, "It's
6 just -- it's unfortunate that we're just in this
7 position with three companies, whereas you look at a
8 broad-base market, and there's plenty of things that are
9 doing phenomenal, we just don't have the ability to own
10 them just because we're stuck where we are with the
11 three stocks."
12 Do you see that?
13 A. Yes.
14 Q. What do you mean that you're stuck where we
15 are?
16 A. I would assume that we're -- we'd been holding
17 the three stocks that he wanted to put the brakes on
18 with and he's down in those three stocks or a
19 combination of.
20 Q. And you believe that he should be holding other
21 positions?
22 A. I don't really remember.
23 Q. And if you go down to line 15, and this is Mr.
24 Claycomb, I believe, it says, "20 grand in June, now
25 it's January, seven months later, and I still haven't

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

Page 257

1 gotten that, you know. And we've gone down to, like,
2 30-something at some point."
3 And you say, "Sure."
4 And then he says, Mr. Claycomb says, "And then
5 we bounced all the way back up to 70."
6 And you say, "Sure. Yeah. And then came down.
7 I mean, a -- we -- we've had twinges, you know."
8 "Money when we were at 70, I would have been at
9 50, we would have lost a little bit less, and then I'd
10 probably be at 38, but I still would have 20 in my
11 pocket. I mean, that's my crazy logic."
12 And you again say, "Sure. No. I get it. I
13 mean, yeah."
14 What's your understanding of what Mr. Claycomb
15 is trying to say to you at that point?
16 MR. O'BRIEN: And I'll just object. I think in line
17 23 of the transcript where it says twinges, I heard
18 swings. So I think it's an inaccuracy in the
19 transcript.
20 MS. PAULEY: That's possible.
21 Q. So, again, my question is, what was your
22 understanding of what Mr. Claycomb was trying to say?
23 A. I mean, I think he summed it up in that last
24 sentence. It's his crazy logic. I think at one point
25 he was up close to 100 percent and I remember at that

Page 258

1 point he wanted to push it with trading to hit 100
2 grand, I remember the number being. And then I think
3 what he's saying there is that he wanted -- I guess he
4 wanted at one point to pull 20 grand of profit out of
5 the account, and then it went down.
6 Now it's January, seven months -- yeah, and I
7 think just from holding the stocks that he was he was
8 down and he didn't want to pull the 20 out.
9 Q. If you could turn to page 11.
10 A. Okay.
11 Q. Line 16. This is a, you know, you're making a
12 statement beginning on line 4, but on line 16 you say,
13 "I thought we were, I'm frustrated that we're not doing
14 better, but I mean, I could tell you, if we could just
15 get back down to the game plan we had set forth a number
16 of months ago, I think there's no reason why we can't
17 have this account back to 60 if not 70. But, I mean, we
18 really have to be proactive, we can't just sit here on
19 our hands and cross our fingers and just hope the
20 account goes higher."
21 Do you see that?
22 A. Yes.
23 Q. Okay. And so you say in the beginning, you
24 say, "I'm frustrated that we're not doing better."
25 What was frustrating for you?

Page 259

1 A. That we were holding three stocks that, I
2 pretty much say right there, that we're crossing our
3 fingers hoping went higher and they weren't as the
4 market was going higher.
5 Q. And on line 18 you're referring to a game plan,
6 what was the game plan?
7 A. The brunt of his return or performance in the
8 beginning, I guess, it was first six months, maybe,
9 first quarter was trading, actively trading. That's how
10 his account went from 30 to 70. And then he did not
11 want to be active and the account in turn went from 70
12 to 30, and we were crossing our fingers hoping the
13 stocks went higher.
14 Q. When you're saying, "We really have to be
15 proactive," what are you recommending to Mr. Claycomb?
16 A. To not just be passive in holding the three
17 positions.
18 Q. So you're recommending that he place additional
19 trades in his account?
20 A. Not necessarily.
21 Q. Well, what were you recommending? What were
22 you recommending?
23 A. To, again, just be proactive with the strategy.
24 Q. What was the strategy?
25 A. To go back to what we were doing in the

Page 260

1 beginning. I don't really remember.
2 Q. You said in the beginning you were actively
3 trading?
4 A. More active than what was going on at that
5 point in time.
6 Q. Okay. So you're saying, "We really have to be
7 proactive, we can't just sit here on our hands and cross
8 our fingers and just hope the account goes higher,"
9 correct?
10 A. That's correct.
11 Q. So you're saying the opposite of sitting on
12 your hands, meaning to trade more frequently, is that
13 correct?
14 A. I don't really know. I don't perceive it that
15 way, but...
16 Q. How do you perceive it?
17 A. The way I perceive it was for the few months
18 that we were like this, he wouldn't return my calls, we
19 would be holding stocks that went down, and then every
20 once in a blue moon he would call in and bitching and
21 complaining why the stocks were going down. And I said
22 we need to get back on the same page of being proactive
23 and doing something about this.
24 Q. So doing something about this, you mean by
25 placing trades?

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 261</p> <p>1 A. Or just returning my phone call.</p> <p>2 Q. Or returning your phone call.</p> <p>3 Why would you need him to return your phone</p> <p>4 call?</p> <p>5 A. To speak about the account going down.</p> <p>6 Q. So that way you could place additional trades?</p> <p>7 A. I didn't say that.</p> <p>8 Q. Okay. So why else would you speak on the</p> <p>9 phone?</p> <p>10 A. I speak plenty of times with clients without</p> <p>11 placing trades.</p> <p>12 Q. What else would -- what were you hoping Mr.</p> <p>13 Claycomb to call you to speak about?</p> <p>14 A. To address the account.</p> <p>15 Q. What needed to be addressed?</p> <p>16 A. It's typical practice to speak to your client</p> <p>17 constantly.</p> <p>18 Q. What --</p> <p>19 A. Talk about the market, situations, the overall</p> <p>20 health of the market, you know, potential trades to put</p> <p>21 on.</p> <p>22 Q. What in particular with respect to Mr.</p> <p>23 Claycomb's account needed to be addressed?</p> <p>24 A. I don't remember, it was three and a half years</p> <p>25 ago.</p>	<p style="text-align: right;">Page 263</p> <p>1 recording. This one's the next page in your transcript,</p> <p>2 beginning on page 13. It's entitled Eugene Bernardo,</p> <p>3 JDN recording, Bernardo 1/31/13. And I'll play it now.</p> <p>4 (Recording played)</p> <p>5 Q. Okay. So, again, same question, do you</p> <p>6 recognize your voice in the recording you just listened</p> <p>7 to?</p> <p>8 A. Yes.</p> <p>9 Q. And who is the other male voice on the phone?</p> <p>10 A. Eugene Bernardo.</p> <p>11 Q. And how do you know that?</p> <p>12 A. From the voice.</p> <p>13 Q. You recognize his voice?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And, again, this recording was made in</p> <p>16 the same way that the prior recording was made where you</p> <p>17 pressed record on the device that was connected to your</p> <p>18 phone?</p> <p>19 A. I would assume so.</p> <p>20 Q. Do you have any reason to believe it was made</p> <p>21 any other way?</p> <p>22 A. No.</p> <p>23 Q. And this is the same device that the Albert</p> <p>24 Claycomb recording that we just listened to was saved</p> <p>25 to, correct?</p>
<p style="text-align: right;">Page 262</p> <p>1 Q. Okay. So your testimony is that when you say,</p> <p>2 "We really have to be proactive, we can't just sit on</p> <p>3 our hands and cross our fingers and just hope the</p> <p>4 account goes higher," your testimony is that that means</p> <p>5 you were not recommending to place additional trades in</p> <p>6 the account?</p> <p>7 A. I'm not saying that. I'm -- you're asking me</p> <p>8 to recall dialogue from three and a half years ago. I</p> <p>9 don't remember the specifics of the conversation.</p> <p>10 Q. The words are your own, correct?</p> <p>11 A. They sure are.</p> <p>12 Q. All I'm asking you is, what did you mean?</p> <p>13 A. I don't remember.</p> <p>14 MR. O'BRIEN: We're going over an hour, can we take</p> <p>15 a break now?</p> <p>16 MS. PAULEY: Sure. We can go off the record.</p> <p>17 THE VIDEOGRAPHER: Okay, going off the record, end</p> <p>18 of disk 7 at 2:06 p.m.</p> <p>19 (Recess)</p> <p>20 THE VIDEOGRAPHER: We are back on the record, start</p> <p>21 of disk 8 at 2:16 p.m.</p> <p>22</p> <p>23 EXAMINATION RESUMED</p> <p>24 BY MS. PAULEY:</p> <p>25 Q. Okay. So why don't we listen to the next</p>	<p style="text-align: right;">Page 264</p> <p>1 A. Yes.</p> <p>2 Q. And, again, this is the device that somehow</p> <p>3 ended up in your garage?</p> <p>4 A. Correct.</p> <p>5 Q. That you located in August of 2017?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And, again, the title of this recording,</p> <p>8 the Eugene Bernardo, JDN recording, Bernardo 1/31/13,</p> <p>9 that's the title that you gave for this recording?</p> <p>10 A. When I had transferred it, yes.</p> <p>11 Q. And the 1/31/13 was the date that appeared in</p> <p>12 connection with this recording on the device?</p> <p>13 A. Correct.</p> <p>14 Q. What -- do you recall what position or what</p> <p>15 security you're referring to in this recording?</p> <p>16 A. I don't.</p> <p>17 Q. You don't recall?</p> <p>18 A. No.</p> <p>19 Q. Okay. And why are you, you know, in -- I'm</p> <p>20 sorry, why are you -- I'm just trying to remember</p> <p>21 exactly where I'm looking at.</p> <p>22 On line 18 you say, "But the reason why I, you</p> <p>23 know, strongly urge to say let's not buy more yet," why</p> <p>24 are you strongly urging him not to buy more yet?</p> <p>25 A. What page is this?</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 265</p> <p>1 Q. Page 13, line 18 and 19.</p> <p>2 A. This might be the conversation about Sarepta.</p> <p>3 Q. So you believe that this conversation is about</p> <p>4 Serupta?</p> <p>5 A. It might be.</p> <p>6 Q. What makes you think that?</p> <p>7 A. It could not be. I'm not really sure.</p> <p>8 Q. Okay. So you don't know why you're saying --</p> <p>9 why you're strongly urging him not to buy more yet?</p> <p>10 A. I mean, you know, this is four years ago. I</p> <p>11 don't know. Potentially it was the market, potentially</p> <p>12 it was the stock, a bad day, I'm not really sure.</p> <p>13 Q. Okay. Okay, let's listen to the next</p> <p>14 recording. It begins on page 15.</p> <p>15 (Recording played)</p> <p>16 Q. And, again, do you recognize your voice in this</p> <p>17 recording?</p> <p>18 A. Yes.</p> <p>19 Q. And who is the other voice on the call?</p> <p>20 A. Eugene Bernardo.</p> <p>21 Q. And, again, this recording was saved to the</p> <p>22 same device as the prior two?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And it was, but the recording was made</p> <p>25 in the same way that the prior two recordings were made?</p>	<p style="text-align: right;">Page 267</p> <p>1 Eugene Bernardo, JDN recording, Bernardo 2/6/13.</p> <p>2 (Recording played)</p> <p>3 Q. Okay. And, again, you recognize your voice in</p> <p>4 that recording?</p> <p>5 A. Yes.</p> <p>6 Q. And who is the other male voice on the phone?</p> <p>7 A. Eugene Bernardo.</p> <p>8 Q. And this recording was made in the same way as</p> <p>9 the prior three recordings, using the device that was</p> <p>10 connected to your phone?</p> <p>11 A. Yes.</p> <p>12 Q. And you were the one who hit record on the</p> <p>13 device?</p> <p>14 A. Yes.</p> <p>15 Q. And this was the same device that you located</p> <p>16 in August of 2017 in your garage?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And what was the purpose of -- oh, let</p> <p>19 me ask, of the title here, Eugene Bernardo, JDN</p> <p>20 recording, Bernardo 2/6/13, that's the title that you</p> <p>21 gave to this recording?</p> <p>22 A. From the information on the screen, digital</p> <p>23 screen.</p> <p>24 Q. Okay. Of the recording device?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 266</p> <p>1 A. I believe so.</p> <p>2 Q. Meaning that you pressed record on the device</p> <p>3 connected to your phone when you initiated the call?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And this, again, this is the same device</p> <p>6 that was located by you in August in your garage?</p> <p>7 A. Correct.</p> <p>8 Q. And the title of this recording, Eugene</p> <p>9 Bernardo, JDN recording, Bernardo 1/31/13 follow-up,</p> <p>10 that was the title that you gave to this recording when</p> <p>11 you transferred it to the disk?</p> <p>12 A. Yes.</p> <p>13 Q. What was the purpose of this call?</p> <p>14 A. That was a follow-up from the conversation</p> <p>15 prior, which was the recording prior.</p> <p>16 Q. And what was the purpose of following up?</p> <p>17 A. Did it every single day.</p> <p>18 Q. For what purpose?</p> <p>19 A. I speak to, generally, most of my clients</p> <p>20 multiple times per day, updates, where their accounts</p> <p>21 are, a lot of times they call in. In his case, he</p> <p>22 called in numerous times per day and I would call him</p> <p>23 numerous times per day. It was just that relationship.</p> <p>24 Q. Okay. Let's move on to the next one.</p> <p>25 Beginning on page 18. And it's the recording titled</p>	<p style="text-align: right;">Page 268</p> <p>1 Q. Okay. So what was the purpose of the 2/6/13</p> <p>2 call?</p> <p>3 A. Good morning, touching base call, which we did</p> <p>4 all the time, every day, virtually.</p> <p>5 Q. And turning to page 19 of the transcript.</p> <p>6 A. Okay.</p> <p>7 Q. Do you see beginning on line 8 where you say,</p> <p>8 "If we get a buck I'd be extremely happy. I mean, if we</p> <p>9 could get a buck today, yeah. I would be more than</p> <p>10 happy just to take it off. Will be at about 300 at that</p> <p>11 point, and, you know, it'll be almost like nothing</p> <p>12 really happened over the last couple," it's inaudible.</p> <p>13 Do you know what you're referring to there?</p> <p>14 A. I would assume the stock going a dollar higher.</p> <p>15 Q. What stock was that?</p> <p>16 A. Again, I would assume it's the SRPT.</p> <p>17 Q. The Sarepta?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And why would you be extremely happy if</p> <p>20 it went up a dollar?</p> <p>21 A. Because when that fake tweet occurred, which I</p> <p>22 guess it was roughly a week or so prior to this</p> <p>23 conversation, the stock went down, I don't remember</p> <p>24 exactly how much, but 20, 25, 30 percent. And it was</p> <p>25 coming back slowly from that point.</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

Page 269

Page 271

1 Q. If you would turn to page 20. On lines 2 and 3
2 Mr. Bernardo says, "What if I told you to put a stop at
3 6000 profit, and to stop at 2009 minus?"
4 Do you see that?
5 A. Yes.
6 Q. What did you understand Mr. Bernardo's
7 suggestion to be?
8 A. To put an order to sell at 6000 in green and a
9 stop loss at a \$2000 loss.
10 Q. And did you agree with that suggestion?
11 A. I mean, according to the dialogue, I suggested
12 that that might not be necessarily a good idea with the
13 volatile stock.
14 Q. Why not?
15 A. Because we've done it before on his suggestion
16 and it got stopped out immediately and the stocks went
17 higher.
18 Q. What do you mean it got stopped out
19 immediately?
20 A. So we put a stock according to his terms and
21 when the market opened, the stock would go lower
22 temporarily, get stopped out and then trade up.
23 Q. Turning to page 21. On line, beginning on line
24 8, do you see where Mr. Bernardo says, "Okay. I'm going
25 to listen to you, because if I did your kitchen, I'd

1 Q. What questions did you ask Mr. Bernardo about
2 his disease?
3 A. We talked about it every day.
4 Q. What questions did you ask?
5 A. I don't remember specifically.
6 Q. Did you ask how long he had had Parkinson's
7 for?
8 A. Potentially, I just don't remember.
9 Q. Did you ask him what the symptoms of
10 Parkinson's were?
11 A. I could have, I don't remember.
12 Q. Did you ask what medications he took?
13 A. I remember having a few conversations about
14 medication. I think maybe this was one of them. But I
15 don't remember exactly.
16 Q. Did you have an understanding of what the side
17 effects of any medications Mr. Bernardo was taking were?
18 A. He would talk about them.
19 Q. So what was your understanding?
20 A. Each one had a different side effect.
21 Q. And what were they?
22 A. I don't remember. They were all different.
23 Q. Would you agree that Mr. Bernardo's capacity to
24 understand any recommendations you would make with
25 respect to his account may have been affected by his

Page 270

Page 272

1 expect you to trust me in putting it in."
2 Do you see that?
3 A. Yes.
4 Q. Did you understand that Mr. Bernardo trusted
5 you?
6 A. Yes.
7 Q. To have his best interest with respect to the
8 account in mind?
9 A. Yes.
10 Q. Why did you -- why did Mr. Bernardo trust you,
11 if you know?
12 A. I couldn't tell you.
13 Q. Going further on page, down page 21, beginning
14 at line 22, Mr. Bernardo says, "It has to be lined up
15 and everything. So -- but what I wanted to tell you is
16 also is -- see, my mind just skipped, I've got too many
17 things on my mind right now with this Parkinson's."
18 Do you see that?
19 A. Yes.
20 Q. What did you know about Mr. Bernardo's
21 Parkinson's Disease in 2012-2013?
22 A. Just what he told me.
23 Q. And what was that?
24 A. Stage 2, it wasn't advanced, he was still
25 running his business, it didn't affect his day to day.

1 illness and any side effects of the medications he was
2 taking?
3 MR. O'BRIEN: Objection. Calls for speculation.
4 Objection to form, foundation.
5 A. Could you repeat that?
6 Q. Would you agree that Mr. Bernardo's capacity to
7 understand any recommendations that you made to him with
8 respect to his account may have been affected by his
9 illness and any side effects to the medications he was
10 taking?
11 MR. O'BRIEN: Same objections.
12 A. I don't think so.
13 Q. Why not?
14 A. Because he ran a business, he had other
15 brokerage accounts at the same point in time. He would
16 call constantly suggesting trades or a game plan,
17 theory. He would look into stocks to buy and send me
18 information on them. I think that he was well aware.
19 Q. What about running a business made you think
20 that he had no impacts from having Parkinson's or any
21 medication?
22 A. I guess that wouldn't just necessarily be a
23 determination factor, but I mean, he was driving at that
24 point in time, he was going on locations. I can't
25 remember in detail. It was a number of years ago.

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

Page 273

Page 275

1 Q. What about his having other brokerage accounts
2 was relevant with respect to whether he had the ability
3 to understand your recommendations given his illness?
4 A. I don't know if that would be relevant or not.
5 It's just, I remember he had multiple accounts that he
6 would speak about all the time.
7 Q. Why did you say it was relevant a moment ago
8 when you answered my question?
9 A. Did I say it was relevant?
10 Q. When I asked you the question whether Mr.
11 Bernardo's capacity to understand your recommendations
12 was affected by his illness, you responded that he had
13 other brokerage accounts.
14 A. Yes.
15 Q. So what about him having other brokerage
16 accounts was relevant?
17 A. I don't know if it was relevant or not. I just
18 know --
19 Q. Then why did you say it?
20 A. Because he did have other brokerage accounts.
21 Q. But you can't think of any reason why that's
22 relevant to whether he had the ability to understand
23 your recommendations?
24 A. I mean, we would discuss the recommendations in
25 detail. He would discuss positions in his other

1 he was currently holding and he would ask me or
2 sometimes fax, fax information. I mean, he was very
3 engaged. He was, you know, very engaged. He was in
4 control.
5 Q. What was your understanding as to the expenses
6 associated with the medications Mr. Bernardo was taking
7 on account of his Parkinson's Disease?
8 A. I'm not really sure. I don't remember.
9 Q. Did you have any understanding of how much he
10 had to pay on a monthly basis for medication?
11 A. I don't remember.
12 Q. Do you believe that it would be important for
13 you to have an understanding of what his expenses were
14 in connection with making recommendations to him for his
15 J.D. Nicholas account?
16 MR. O'BRIEN: Objection. Lacks foundation.
17 A. I guess that would be. I mean, he did say it
18 was experimental, so that would generally be free.
19 Q. You believe his medications were free?
20 A. If they were experimental. He did say it in
21 this conversation here.
22 Q. You believe he was saying in this conversation
23 that he was getting experimental free medication?
24 A. I'm not saying that. But, generally speaking,
25 if they're experimental treatments, they would be.

Page 274

Page 276

1 brokerage accounts and what he didn't like, reasons why
2 he didn't like them. If that's relevant, that's
3 relevant.
4 Q. What about Mr. Bernardo's -- you mentioned that
5 he would call you with suggestions for the account.
6 What about -- what about that gave you the
7 impression that he had the ability to understand any
8 recommendations you made about his account?
9 A. Could you repeat that?
10 Q. You testified a moment ago that Mr. Bernardo
11 would call you with suggestions with respect to his J.D.
12 Nicholas account.
13 Do you remember that?
14 A. Yes.
15 Q. And that was in response to my question asking
16 you about whether Mr. Bernardo had the capacity to
17 understand any recommendations you made to him given his
18 illness.
19 Do you recall that?
20 A. Yes.
21 Q. My question is, is what about him making
22 suggestions to you gave you the understanding that he
23 had the ability to understand your recommendations?
24 A. I mean, there would generally be stuff that he
25 looked at after the fact or ideas he had with positions

1 Q. What is that understanding based on?
2 A. That's my understanding of it.
3 Q. So you have, sitting here today, you have no
4 understanding of what amount of money, if any, Mr.
5 Bernardo was paying for medication with respect to
6 Parkinson's?
7 A. I don't remember. It was four and a half years
8 ago.
9 Q. If we could turn to page 27. And you'll see in
10 line 20 that Mr. Bernardo is referring to a brain
11 operation that he had.
12 Do you see that?
13 A. Yes.
14 Q. What did you know about any brain operations
15 that Mr. Bernardo had in or around 2012 or 2013?
16 A. I don't recall. I don't remember.
17 Q. You don't remember anything about Mr. Bernardo
18 having a brain operation?
19 A. I remember him telling me about it last month,
20 or earlier this month.
21 Q. Did you ask any questions about the brain
22 operation that Mr. Bernardo had had at that time,
23 meaning in 2012-2013?
24 A. I might have, I don't remember.
25 Q. Do you know why he had to have a brain

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 277</p> <p>1 operation?</p> <p>2 A. Not off the top of my head at this point.</p> <p>3 Q. Do you know what the outcome of the brain</p> <p>4 operation was?</p> <p>5 A. I don't remember, no.</p> <p>6 Q. Do you know if he had to take any medications</p> <p>7 in connection with an operation on his brain?</p> <p>8 A. I don't remember.</p> <p>9 Q. If we could turn to page 35. And you'll see on</p> <p>10 lines 15 and 16, Mr. Bernardo says, "Listen, I'm going</p> <p>11 to recommend you to my son."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Did Mr. Bernardo's son open an account with</p> <p>15 you?</p> <p>16 A. Not that I remember.</p> <p>17 Q. Did you ever speak to his son?</p> <p>18 A. I might have. I potentially might have. I</p> <p>19 don't remember.</p> <p>20 Q. Turning to -- Mr. Bernardo's son does not have</p> <p>21 an account with you today, correct?</p> <p>22 A. No.</p> <p>23 Q. Turning to page 37.</p> <p>24 A. Okay.</p> <p>25 Q. Beginning at line 18. Mr. Bernardo says,</p>	<p style="text-align: right;">Page 279</p> <p>1 was in his late 60s, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And he had told you that he had Parkinson's</p> <p>4 Disease?</p> <p>5 A. Yes.</p> <p>6 Q. And that he'd had a brain operation?</p> <p>7 A. Yes.</p> <p>8 Q. Was your strategy suitable for somebody in</p> <p>9 their late 60s who was sick and had all of their savings</p> <p>10 invested with you?</p> <p>11 MR. O'BRIEN: Objection. Lacks foundation. Form.</p> <p>12 A. I'd have a thorough suitability analysis with</p> <p>13 every client, I explained costs, risks associated. I</p> <p>14 give them a good basis, foundation to invest to achieve</p> <p>15 an objective.</p> <p>16 Q. So -- I'm sorry, say your answer again.</p> <p>17 (Answer read)</p> <p>18 Q. So my question was, was the strategy that you</p> <p>19 represented to Mr. Bernardo, was that strategy suitable</p> <p>20 of somebody who was in his late 60s and who was sick and</p> <p>21 as he is telling you in this call, had all of his</p> <p>22 savings invested with you?</p> <p>23 MR. O'BRIEN: Same objections.</p> <p>24 A. At that point in time after conducting a</p> <p>25 suitability analysis, I mean, that's the game plan that</p>
<p style="text-align: right;">Page 278</p> <p>1 "Well, I'm listening to you. I mean, you -- you told me</p> <p>2 it won't be overnight, I'm listening to you. And you</p> <p>3 said you have to have a strong stomach, I have a strong</p> <p>4 stomach for this -- I'm trying to have a strong stomach</p> <p>5 for this.</p> <p>6 "But what worries me is when you get too far</p> <p>7 behind, having just a little handful. It's like having</p> <p>8 a -- a handful -- a quarter of a million, to me, is just</p> <p>9 nothing compared to what I had, and I'm afraid now, what</p> <p>10 if I lose that quarter of a million? What if it goes</p> <p>11 down another 125,000? I'm basically down to nothing."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. So is Mr. Bernardo telling you that he's</p> <p>15 essentially down to his last \$125,000?</p> <p>16 A. No.</p> <p>17 Q. What do you interpret that statement to mean?</p> <p>18 A. That he doesn't want to lose a quarter million.</p> <p>19 Q. What is "I'm basically down to nothing" mean?</p> <p>20 A. I don't know what he means by that, but --</p> <p>21 Q. What does it mean to you?</p> <p>22 A. That means that if it goes down another</p> <p>23 125,000, he's basically down to nothing.</p> <p>24 Q. And you knew at the time, and I believe Mr.</p> <p>25 Bernardo said several times during this call, that he</p>	<p style="text-align: right;">Page 280</p> <p>1 we had laid a foundation on. And he said it when we</p> <p>2 were at his house prior to this month, that he was still</p> <p>3 trading actively to myself at Aegis Capital.</p> <p>4 Q. So you believe your strategy at J.D. Nicholas</p> <p>5 that you were recommending to Mr. Bernardo was suitable</p> <p>6 to somebody in Mr. Bernardo's circumstances?</p> <p>7 A. Yes, after having conversations constantly and</p> <p>8 reevaluating.</p> <p>9 Q. Now, this call we just listened to was quite a</p> <p>10 lengthy call. At no point during this call was there</p> <p>11 any mention of any costs associated with any of the</p> <p>12 trading that was discussed.</p> <p>13 Why is that?</p> <p>14 MR. O'BRIEN: Objection. Mischaracterizes the</p> <p>15 recording, and form.</p> <p>16 Q. Can you identify, take as much time as you</p> <p>17 need, can you identify in the transcript of the</p> <p>18 recording we just listened to beginning on page 18 where</p> <p>19 you're discussing the costs associated with any of the</p> <p>20 trading?</p> <p>21 MR. O'BRIEN: Again, same objections.</p> <p>22 A. I mean, we, from what I understood from the</p> <p>23 recording, we didn't engage in a transaction in the</p> <p>24 conversation.</p> <p>25 Q. Can you identify anywhere within the transcript</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 281</p> <p>1 of this recording where costs are discussed?</p> <p>2 MR. O'BRIEN: Same objection.</p> <p>3 A. It could have been a prior transaction, I mean,</p> <p>4 a prior conversation.</p> <p>5 Q. Well, that's not my question.</p> <p>6 Can you identify anywhere in the transcript of</p> <p>7 this recorded call where costs are discussed?</p> <p>8 A. No, I don't know why that would be discussed</p> <p>9 necessarily on that conversation.</p> <p>10 Q. So let's move on to the next recording. This</p> <p>11 one begins on page 46 of the transcript.</p> <p>12 MR. O'BRIEN: I'm going to need a break. Can we</p> <p>13 just have a quick break?</p> <p>14 MS. PAULEY: Sure. That's fine.</p> <p>15 THE VIDEOGRAPHER: Going off the record at 3:04 p.m.</p> <p>16 (Recess)</p> <p>17 THE VIDEOGRAPHER: Back on the record at 3:11 p.m.</p> <p>18</p> <p>19 EXAMINATION RESUMED</p> <p>20 BY MS. PAULEY:</p> <p>21 Q. Right before we took the break, Mr. Dean, you</p> <p>22 had mentioned that you did a suitability analysis for</p> <p>23 Mr. Bernardo.</p> <p>24 Do you remember that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 283</p> <p>1 A. I don't know where, or what they did with them</p> <p>2 afterwards, but they were in my drawer, my client book.</p> <p>3 Q. And was it one notebook or what --</p> <p>4 A. No, probably five.</p> <p>5 Q. Around five notebooks?</p> <p>6 A. Something along those lines.</p> <p>7 Q. And there are handwritten notes contained</p> <p>8 within those notebooks?</p> <p>9 A. Every broker has those for their clients.</p> <p>10 Q. And did you have a separate notebook for</p> <p>11 different clients or how was the notebook organized?</p> <p>12 A. Alphabetically.</p> <p>13 Q. By client?</p> <p>14 A. It's a binder, yes. It was by client. Well,</p> <p>15 alphabetically, yes, by client's last name.</p> <p>16 Q. So you're saying it was five binders?</p> <p>17 A. Um-hmm, correct. They are small. They are</p> <p>18 small, I don't know how to describe them, but small</p> <p>19 binders. Not your large, three and a half inch.</p> <p>20 Q. And the binders contained handwritten notes?</p> <p>21 A. Client pages with their information and then</p> <p>22 handwritten notes, contemporaneous notes.</p> <p>23 Q. What's a client page?</p> <p>24 A. I don't know how to describe it. Their name,</p> <p>25 address, phone number, different phone numbers, it has</p>
<p style="text-align: right;">Page 282</p> <p>1 Q. Okay. What documentation can you identify for</p> <p>2 us that would reflect the suitability analysis that you</p> <p>3 conducted?</p> <p>4 A. It would be in my drawer or J.D. Nicholas would</p> <p>5 have it, I would assume.</p> <p>6 Q. In what drawer?</p> <p>7 A. Well, my old drawer at J.D. Nicholas. It would</p> <p>8 be in that paperwork.</p> <p>9 Q. What paperwork are you referring to?</p> <p>10 A. Note pages from the account, beginning</p> <p>11 conversations, prior to opening the account and after</p> <p>12 opening the account. I don't know if they had supplied</p> <p>13 that stuff to you guys.</p> <p>14 Q. What note pages?</p> <p>15 A. Client note pages.</p> <p>16 Q. What does that mean?</p> <p>17 A. Notes that I take on clients.</p> <p>18 Q. Handwritten notes?</p> <p>19 A. Yes.</p> <p>20 Q. You take handwritten notes with respect to your</p> <p>21 clients?</p> <p>22 A. Every single one of them.</p> <p>23 Q. And where were those notes maintained?</p> <p>24 A. At J.D. Nicholas.</p> <p>25 Q. Where at J.D. Nicholas?</p>	<p style="text-align: right;">Page 284</p> <p>1 all the trades that they have done, that's really up to</p> <p>2 the broker to keep that up to date. I can't recall what</p> <p>3 else. Email address, all pertinent information.</p> <p>4 Q. What effort have you made to obtain those</p> <p>5 binders or notebooks in connection with this litigation?</p> <p>6 A. We've called and tried several dozen times.</p> <p>7 Q. Who have you called?</p> <p>8 A. The owners, the compliance, all the old</p> <p>9 compliance, and we just constantly get the runaround.</p> <p>10 Q. So the owners meaning Nick Tsiketas, James</p> <p>11 Dolan and Dan Dvorznak?</p> <p>12 A. Yes.</p> <p>13 Q. You personally have spoken with each of them?</p> <p>14 A. And Don.</p> <p>15 Q. And Don who?</p> <p>16 A. And Don Fowler.</p> <p>17 Q. And Don Fowler --</p> <p>18 A. He has spoken to them as well.</p> <p>19 Q. And you're saying Don Fowler has also spoken to</p> <p>20 each of the three owners?</p> <p>21 A. Yes.</p> <p>22 Q. And what did the owners tell you when you spoke</p> <p>23 with them?</p> <p>24 A. They have to look, or we think we supplied it</p> <p>25 all, or you have to ask Scalise because he's the one</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

Page 285

Page 287

1 that maintains it which makes no sense because he has no
2 relationship with them anymore. It's all on a computer,
3 we just have to find the computer. It's just a bunch of
4 BS.
5 **Q. And what have -- you said you also spoke to**
6 **some of the former compliance personnel at J.D.**
7 **Nicholas?**
8 A. Rick Scalise and also Anthony Minerva.
9 **Q. And what did Mr. Scalise tell you?**
10 A. I actually had not spoken to him, sorry.
11 Minerva I had spoken to, but they were both former
12 compliance.
13 **Q. So you have not spoken to Mr. Scalise?**
14 A. No. Jim Dolan spoke to him and relayed what he
15 said to Don Fowler, supposedly.
16 **Q. And what was that?**
17 A. Was that Scalise would have to, I guess, look
18 further or some dismissive comment.
19 **Q. And you said you did speak to Mr. Minerva,**
20 **though?**
21 A. At one time, yes.
22 **Q. And what did he say?**
23 A. He pretty much hung up on me.
24 **Q. Okay. And during a call you had, I believe you**
25 **said with one of the owners, you said, did one of them**

1 A. Yes.
2 **Q. And was the other voice Eugene Bernardo?**
3 A. Yes.
4 **Q. And this recording was made in the same way as**
5 **the prior recordings we have listened to today?**
6 A. I believe so.
7 **Q. And it was also on the device you located in**
8 **your garage?**
9 A. Yes.
10 **Q. What was the purpose of this call?**
11 A. Typical call that we would have in the morning,
12 kind of update call, update phone call.
13 **Q. Are you recommending that more SRPT stock be**
14 **purchased in Mr. Bernardo's account?**
15 A. We were discussing it, I don't think anything
16 was purchased on that conversation.
17 **Q. And line 10 on page 46, what IPO are you**
18 **referring to?**
19 A. I don't know. I don't remember.
20 **Q. And you don't believe that any more SRPT or**
21 **Sarepta was purchased in response to the call?**
22 A. I don't know.
23 **Q. Okay. Let's listen to the next one. Page 49**
24 **of Exhibit 254. It's called Pilkington Sync Trade.**
25 **(Recording played)**

Page 286

Page 288

1 say to you that they had supplied it all?
2 A. That's, yeah, what they had said to us pretty
3 much, that they supplied everything, I guess to maybe
4 Ian, originally, and that he supplied everything.
5 **Q. And who, which owner specifically said that to**
6 **you?**
7 A. I don't remember if it was to me or Don, but it
8 was Jim Dolan.
9 **Q. And by Ian, you are referring to Ian Frimet?**
10 A. That's correct.
11 **Q. Okay. Who represented J.D. Nicholas in**
12 **connection with the SEC's investigation?**
13 A. Yes.
14 **Q. Okay. And am I correct in that what Mr. Dolan**
15 **was saying was that they had supplied everything to Mr.**
16 **Frimet who had in turn supplied everything to us, is**
17 **that correct?**
18 A. That's correct.
19 **Q. Okay. So let's go to the next call in the**
20 **transcript which is Exhibit 254. It's entitled Eugene**
21 **Bernardo, JDN recording, Bernardo SRPT tweet 1/31/13 and**
22 **I'll play it first.**
23 **(Recording played)**
24 **Q. And, again, that was your voice on the**
25 **recording?**

1 **Q. Do you recognize your voice on that call?**
2 A. No.
3 **Q. That's not your voice?**
4 A. No.
5 **Q. Do you know who it is?**
6 A. Potentially Don. It's not me.
7 **Q. Okay. So you don't recall this call with --**
8 **and Pilkington, is that Bobby Pilkington?**
9 A. I would assume so.
10 **Q. Why would -- oh, you know what, it's still**
11 **going.**
12 **(Recording played)**
13 **MR. O'BRIEN:** Okay, so the court reporter missed it.
14 So let's go back to the beginning. I started by saying
15 I think the dead air continues for some time, if I
16 recall this recording correctly. This was not a
17 recording that was produced as part of the recordings
18 that Greg found on that device in August.
19 This was another recording that was produced in
20 discovery at a separate time and so it -- and so I don't
21 know why you're asking him about this.
22 **MS. PAULEY:** Where was this recording obtained from?
23 **MR. O'BRIEN:** Sitting here, I don't know. I'd have
24 to go back and figure it out. But it was produced,
25 obviously you have it so you know it was produced.

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

Page 289

Page 291

1 **MS. PAULEY:** Right. Where else did you obtain
2 recordings? We produced recordings to you that we had
3 originally obtained from J.D. Nicholas and then you
4 produced to us recordings that Mr. Dean had located.
5 What other sources of recordings were there?
6 **MR. O'BRIEN:** I don't know because I didn't -- I
7 haven't sort of researched the provenance of this
8 particular recording.
9 I do know that there were recordings in
10 discovery. I know the SEC produced recordings. It's my
11 understanding that Ian Frimet also produced recordings
12 to the SEC.
13 So my assumption is it's from one of those
14 recordings that was produced and was somehow provided to
15 the SEC. I couldn't tell you anything more.
16 **MS. PAULEY:** Okay. Well, we'll follow up, we'll
17 follow up and just make sure we understand what the
18 source of that recording is.
19 **MR. O'BRIEN:** And we may not know. As you know, we
20 weren't involved in the initial investigation of this
21 case. That was when Ian Frimet represented J.D.
22 Nicholas, so the answer very well may be that we don't
23 know where this recording came from, but it's in,
24 obviously, in discovery.
25 **MS. PAULEY:** Okay. Well, yeah, I believe we

1 A. Yes.
2 **Q. And who is the other voice?**
3 A. Steve Hellwig.
4 **Q. Was Hellwig a client of yours?**
5 A. Yes.
6 **Q. And, again, this recording was made in the same**
7 **way as all the others, using the recording device that**
8 **was connected to your phone?**
9 A. Yeah, other than the one you played before
10 this.
11 **Q. Right. Okay.**
12 **And this is the same recording device that you**
13 **located in your garage?**
14 A. Yes.
15 **Q. So what was the purpose -- and, again, the**
16 **title of this call, Steve Hellwig, JDN recording,**
17 **Hellwig GRPN MOS, that's the title that you gave for**
18 **this recording?**
19 A. Um-hmm.
20 **Q. How come you didn't put a date on this one?**
21 A. Potentially it didn't have a date on it.
22 **Q. Okay. So you don't -- you think that the**
23 **reason why there was no date associated with it on the**
24 **device itself?**
25 A. Yeah, I was going off the information on the

Page 290

Page 292

1 received this from you around either the day, the same
2 day or the day after we received the other recordings
3 that had originally been provided by Mr. Dean. So we
4 can follow up afterwards.
5 But what you're representing here today is that
6 the voices on this recording, you're saying Mr. Dean's
7 voice is not on this recording?
8 **MR. O'BRIEN:** Well, I'm not testifying, but Mr. Dean
9 has said that it's not his voice, it doesn't sound like
10 his voice to me either.
11 **MS. PAULEY:** Why don't we listen to the rest of it
12 just to confirm that your voice is at no point in this
13 recording.
14 **THE WITNESS:** I've never heard this before.
15 **MS. PAULEY:** Okay. Well, I'm going to play the rest
16 of it.
17 (Recording played)
18 **Q. So at no point during that recording did you**
19 **hear your voice?**
20 A. No.
21 **Q. Okay. So, then, let's go to the recording**
22 **that's transcribed on page 52 of Exhibit 254 titled**
23 **Steve Hellwig, JDN recording, Hellwig GRPN MOS.**
24 (Recording played)
25 **Q. Did you recognize your voice on that call?**

1 device.
2 **Q. Okay. Do you have any idea when this recording**
3 **was made?**
4 A. I don't. I don't.
5 **Q. And what was the purpose of this call?**
6 A. Just a standard touching base call that I do
7 with most all my clients.
8 **Q. And going to page 53, line 10 and 11 you say,**
9 **"A little over two grand we made between the stock that**
10 **we had sold."**
11 **Do you see that?**
12 A. Yes.
13 **Q. What are you referring to there?**
14 A. That he made two grand from the stock he had
15 sold.
16 **Q. Do you know what stock that was?**
17 A. I don't.
18 **Q. Do you know if the two grand was before or**
19 **after costs?**
20 A. I don't recall.
21 **Q. Would you agree it would be important for Mr.**
22 **Hellwig to understand what he had made after costs**
23 **versus before costs?**
24 A. Of course, yeah. I mean, we discussed cost and
25 risk all the time.

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

<p style="text-align: right;">Page 293</p> <p>1 Q. But not in this call, correct?</p> <p>2 A. There was no transaction on the call.</p> <p>3 Q. Correct. So there's no discussion of costs in</p> <p>4 this recording, is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Why don't we take a break. We're almost</p> <p>7 finished. Why don't we take a break for just a few</p> <p>8 minutes and then we can wrap up.</p> <p>9 THE VIDEOGRAPHER: Going off the record at 3:32 p.m.</p> <p>10 (Recess)</p> <p>11 THE VIDEOGRAPHER: Back on the record at 3:41 p.m.</p> <p>12</p> <p>13 EXAMINATION RESUMED</p> <p>14 BY MS. PAULEY:</p> <p>15 Q. Okay, just a few more questions.</p> <p>16 For the device that you located in your garage</p> <p>17 on which these recordings that we listened to today were</p> <p>18 saved, where is that device now?</p> <p>19 A. I threw it away.</p> <p>20 Q. You threw it in the trash?</p> <p>21 A. Correct.</p> <p>22 Q. Why?</p> <p>23 A. Because I transferred the information and sent</p> <p>24 it to Liam.</p> <p>25 Q. You transferred everything that was on the</p>	<p style="text-align: right;">Page 295</p> <p>1 the device onto a disk rather than just provide the</p> <p>2 device itself to your counsel?</p> <p>3 A. The -- well, the device was semidamaged in the</p> <p>4 first place. It was sitting, I guess, in a puddle of</p> <p>5 dried up, I don't know what it was, it was dark liquid</p> <p>6 that was dried. So I just, I thought it was a better</p> <p>7 idea to put the information on a disk.</p> <p>8 Q. In what way was it damaged?</p> <p>9 A. The battery area was exposed and it had a dried</p> <p>10 battery acid, I guess is what it was.</p> <p>11 Q. But you were able to retrieve recordings from</p> <p>12 the device?</p> <p>13 A. Yeah, the recordings that were audible.</p> <p>14 Q. Did you transfer onto any type of disk or any</p> <p>15 other media any of the other recordings that were not</p> <p>16 produced in connection with this litigation?</p> <p>17 A. No, I don't think so.</p> <p>18 Q. So the only recordings that were transferred</p> <p>19 were the ones we have listened here to today?</p> <p>20 A. Yes. Yeah, there were only a handful of</p> <p>21 recordings on there. There was my wife, GMAC or GMC,</p> <p>22 some white noise and a handful of recordings that I</p> <p>23 produced with the exception of that Pilkington which</p> <p>24 didn't come from me.</p> <p>25 Q. So have all recordings with customers from J.D.</p>
<p style="text-align: right;">Page 294</p> <p>1 device to Liam, onto something that went to Liam?</p> <p>2 A. Onto a disk.</p> <p>3 Q. Everything that was on the device?</p> <p>4 A. Everything that was relevant to J.D. Nicholas.</p> <p>5 Q. Who made the determination of what was relevant</p> <p>6 and what was not?</p> <p>7 A. Myself.</p> <p>8 Q. And the device is in the trash?</p> <p>9 A. Correct.</p> <p>10 Q. Where did you -- is it a trash at your home?</p> <p>11 A. It was at my home, yeah, but I don't know where</p> <p>12 it is now.</p> <p>13 Q. Did you -- did Liam listen -- or did anyone</p> <p>14 else other than you listen to the recordings from the</p> <p>15 device before you threw it in the trash?</p> <p>16 A. I'm not sure.</p> <p>17 Q. How do you not know?</p> <p>18 A. Potentially in 2013-'14, I don't know about --</p> <p>19 Q. After you located the device in 2017, did you</p> <p>20 -- did anyone other than you ever have custody of the</p> <p>21 device?</p> <p>22 A. I mean, custody, no, I guess not.</p> <p>23 Q. So you never gave the device itself to Liam?</p> <p>24 A. No.</p> <p>25 Q. Why did you transfer certain information from</p>	<p style="text-align: right;">Page 296</p> <p>1 Nicholas that are in your possession, custody or control</p> <p>2 been provided to your counsel?</p> <p>3 A. Yeah, from what I know, unless I find something</p> <p>4 else, which I would provide.</p> <p>5 Q. Do you expect to find something else?</p> <p>6 A. I would not expect to, but if I do, I would</p> <p>7 provide it.</p> <p>8 Q. How is it -- can you explain why this</p> <p>9 particular recording device was brought to your home but</p> <p>10 no other ones were?</p> <p>11 A. I bring random stuff home on accident all the</p> <p>12 time. I brought home Don's cell phone once on accident.</p> <p>13 It was in my pocket. I can't explain it, no.</p> <p>14 Q. Can you explain how the recording device could</p> <p>15 be sitting in your bin in your garage for a period of</p> <p>16 time without you discovering it?</p> <p>17 A. It could be many different reasons. My wife</p> <p>18 has a knack of cleaning out my drawers and everything</p> <p>19 else and thinking she's doing me a favor, I guess, but</p> <p>20 typically rearranging things to the point where she</p> <p>21 could find things and I can't.</p> <p>22 After Sandy, originally, it took us about two</p> <p>23 years to redo our basement, which we had a bunch of</p> <p>24 stuff in bins in the garage and the attic, it could have</p> <p>25 potentially somehow gotten there. Maybe when she got a</p>

Securities and Exchange Commission v.
Gregory T. Dean, et al.

Gregory T. Dean - Vol. 2
October 27, 2017

Page 297

Page 299

1 new car or myself got a new car, took all the stuff that
2 was in the trunk, put it in a bin, put it in the garage.
3 **Q. Hurricane Sandy was in October of 2012, right?**
4 A. Correct.
5 **Q. Okay. And these recordings were all from 2013**
6 **and 2014?**
7 A. Correct.
8 **Q. Okay. So these recordings were all made after**
9 **Hurricane Sandy, right?**
10 A. Yes.
11 **Q. Okay. And did you -- you mentioned before in**
12 **connection with Pilkington Sync Trade recording that you**
13 **thought one of the voices might be Don Fowler, was that**
14 **right?**
15 A. I believe so, yes.
16 **Q. Do you know why Don Fowler would have had**
17 **recorded calls on a device that was hooked up to the**
18 **phone on your desk?**
19 **MR. O'BRIEN:** I will object. Misstates the
20 evidence. Lacks foundation.
21 A. I don't think that that was the case.
22 **Q. The recording -- or the -- okay. We can strike**
23 **that.**
24 **Did Don Fowler record calls?**
25 A. I don't know.

1 **your wife's recording that was on the device, did you**
2 **move all of the other recordings onto a disk that you**
3 **sent to your counsel?**
4 A. The recordings that were, yeah, relevant, the
5 J.D. Nicholas customer client recordings, every one,
6 yeah, every one of them.
7 **MR. O'BRIEN:** That's all I have. Thanks.
8 **MS. PAULEY:** We're finished.
9 **THE VIDEOGRAPHER:** This concludes the video
10 deposition of Gregory Dean. The time is 3:48 p.m.,
11 going off the record.
12 (At 3:48 p.m., the deposition proceedings
13 concluded.)
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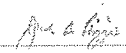
GREGORY T. DEAN

Page 298

Page 300

1 **Q. You have no idea if he used a recording device**
2 **at any point in time?**
3 A. I didn't sit next to him, and I don't know.
4 **Q. You never had any conversations with him about**
5 **recording calls with customers?**
6 A. Not that I remember.
7 **Q. Okay. So sitting here today, you have no**
8 **understanding as to whether Don Fowler recorded calls**
9 **with customers at any point in time at J.D. Nicholas?**
10 A. Not that I recall or remember, no.
11 **MS. PAULEY:** Okay. I don't think we have any
12 further questions so we can close the record.
13 **MR. O'BRIEN:** I just --
14 **MS. PAULEY:** Oh, sure.
15 **MR. O'BRIEN:** Just to clarify based on your last
16 question.
17
18 **EXAMINATION**
19 **BY MR. O'BRIEN:**
20 **Q. The Pilkington recording which starts on page**
21 **49 of SEC 254, was that recording on the device you**
22 **found in your garage?**
23 A. I don't know. I don't think so, but I'm not
24 really sure.
25 **Q. Did you put any of the, other than the GMAC and**

1 STATE OF NEW YORK)
2) ss
3 COUNTY OF NEW YORK)
4 I hereby certify that the witness in the
5 foregoing deposition, GREGORY T. DEAN, was by me duly
6 sworn to testify to the truth, the whole truth, and
7 nothing but the truth, in the within-entitled cause;
8 that said deposition was taken at the time and place
9 herein named; that the deposition is a true record of
10 the witness's testimony as reported by me, a duly
11 certified shorthand reporter and a disinterested person,
12 and was thereafter transcribed into typewriting by
13 computer.
14 I further certify that I am not interested in
15 the outcome of the said action, nor connected with, nor
16 related to any of the parties in said action, nor to
17 their respective counsel.
18 IN WITNESS WHEREOF, I have hereunto set my hand
19 this 8th day of November, 2017.
20 Reading and Signing was: Not requested
21
22
23
24
25


JOSEPH B. PIROZZI, RPR
STATE OF NEW YORK